

Economic Development, Trade & Banking Committee

**Thursday, March 16, 2006
1:30 pm – 4:00 pm
306 HOB**

Committee Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

Economic Development, Trade & Banking Committee

Start Date and Time: Thursday, March 16, 2006 01:30 pm
End Date and Time: Thursday, March 16, 2006 04:00 pm
Location: 306 HOB
Duration: 2.50 hrs

Consideration of the following bill(s):

HB 825 Financial Literacy Council by Altman
HB 847 City of Jacksonville, Duval County by Mahon
HB 865 Enterprise Zone Incentives to Serve the Uninsured by Quinones
HB 1143 Economic Development Incentives by McInvale

Consideration of the following proposed committee bill(s):

PCB EDTB 06-03a -- Internet Phishing

According to rule 7.22(c), non-appointed members must file amendments by 5 p.m., Wednesday, March 15, 2006. The Chairman requests that committee member amendments also be filed by 5 p.m., Wednesday, March 15, 2006.

NOTICE FINALIZED on 03/14/2006 10:11 by GOLDING.SARA



The Florida House of Representatives

Commerce Council

Economic Development, Trade & Banking Committee

Allan G. Bense
Speaker

Gus Michael Bilirakis
Chair

Agenda **March 16, 2006**



- I. Roll Call**
- II. Welcome and Opening Remarks**
- III. Consideration of the following bills :**
 - HB 825 – Financial Literacy Council
by Representative Altman
 - HB 847 – City of Jacksonville, Duval County
by: Representative Mahon
 - HB 821 – Enterprise Zone Incentives to Serve the Uninsured
by: Representative Quinones
 - HB 1143 – Economic Development Incentives
by: Representative McInvale
- IV. Proposed Committee Bills:**
 - PCB EDTB 06-03a – Internet Phishing
- V. Adjourn**

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 825
SPONSOR(S): Altman and others
TIED BILLS:

Financial Literacy Council

IDEN./SIM. BILLS: CS/SB 1368

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Economic Development, Trade & Banking Committee</u>	<u></u>	<u>Olmedillo</u> 	<u>Carlson</u> 
2) <u>State Administration Appropriations Committee</u>	<u></u>	<u></u>	<u></u>
3) <u>Commerce Council</u>	<u></u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

HB 431 creates the Financial Literacy Council (Council) within the Department of Financial Services to provide information and education about financial issues to consumers and small businesses.

The bill provides for purposes, membership, meetings, and powers and duties. It authorizes the Council to seek resources from a variety of sources to support its efforts. The bill requires submission of an annual report beginning on January 1, 2008. The Council may not continue as a governmental entity after December 31, 2011.

The bill appropriates \$50,000 in nonrecurring funds to the Council for the 2006-07 fiscal year, contingent on receipt of private or grant funds by the Council.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government--the bill creates a new advisory body, the Financial Literacy Council, and appropriates \$50,000 to the Council.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The elected Chief Financial Officer (CFO) is the head of the Department of Financial Services (DFS). Among the CFO's responsibilities are:

- Licensing and oversight of insurance agents and agencies;
- Investigating fraud, including identity theft and securities and insurance fraud;
- Overseeing cemeteries and funeral homes that sell pre-need contracts;
- Overseeing the state's accounting and auditing functions, including review of state contracts and safeguarding unclaimed property;
- Monitoring the investment of state funds and managing the deferred compensation program for state employees; and
- Ensuring that businesses have workers' compensation coverage in place for employees.

Within the DFS, the Financial Services Commission, composed of the Governor, Attorney General, Chief Financial Officer, and Commissioner of Agriculture, oversees the Office of Insurance Regulation and the Office of Financial Regulation.

- The Office of Insurance Regulation is responsible for regulation of all insurance companies and risk-bearing entities, including licensing, rates, policy forms, market conduct, claims, adjusters, issuance of certificates of authority, solvency, viatical settlements, and premium financing.
- The Office of Financial Regulation is responsible for overseeing state-chartered banks, credit unions, financial institutions, finance companies, and the securities industry.

Research indicates that some Floridians would benefit from improving their personal finance practices. A statewide survey of adult Floridians conducted in June 2004 by Mason-Dixon Polling & Research Inc. found:

- More than one-third have more debt than savings or investments;
- About 25% are not putting any money aside each month for retirement;
- More than 80% of Floridians have credit cards, and 35% report current debt levels over \$5,000; and
- While 96% of Floridians review their monthly credit card statements, 23% of Floridians have never reviewed their credit reports.¹
- Increasing age and income level tends to be associated with smarter personal finance practices.

In the 12 month period ending December 31, 2004, bankruptcy filings in Florida totaled 85,889. There were 1,183 business filings and 84,706 personal filings.² These numbers include filings under chapters 7, 11, 12, and 13.

A few of the organizations which currently provide information and education about financial issues to consumers and small businesses include:

¹ http://www.yourmoneyyourlife.org/downloads/Mason-Dixon_Survey.pdf. Margin of error +/- 4%.

² http://www.uscourts.gov/bnkrpctystats/bankrupt_f2table_dec2004.pdf

- The Florida Council for Economic Education, which is dedicated to improving economic education and financial literacy for students of all ages and abilities throughout the state;³
- Small business development centers, which provide management assistance to current and prospective small business owners;⁴
- The Service Corps of Retired Executives, which offers free counseling to small business owners;⁵
- The Florida JumpStart Coalition, which seeks to improve the personal financial literacy of Floridians by focusing on the state's youth by promoting and teaching personal finance skills so that individuals can make informed, responsible financial decisions;⁶ and
- Consumer Credit Counseling Service members, which provide free and affordable confidential money management, financial education, budget counseling, and debt management services to consumers.⁷

Proposed Changes

The bill creates the Financial Literacy Council (Council) to provide a single state resource for consumers and small businesses to contact for basic financial information. The bill provides that the Council's goals are:

- Equipping small businesses, young people, working adults, and seniors with the tools and resources they need to make informed financial decisions;
- Helping residents of the state learn more about personal financial issues, including, but not limited to applying for loans, managing debt, making sound investment choices, and saving for retirement;
- Facilitating the sharing of best practices for financial management that are characteristic of highly successful small businesses; and
- Serving as an educational forum for resource planning, financial planning, and management issues for small businesses.

The bill provides that the Council will be made up of the state Chief Financial Officer, or his or her designee, and not more than 9 other members to be appointed by the CFO.

- Six members must be persons with experience in various sectors of the financial industry, including banking, finance, insurance, real estate, and securities.
- At least one member must be a person who is not employed by and is not a representative of the financial industry.

At least one member must be chosen from a list of three persons submitted to the CFO by a senior advocacy group, and at least one member must be chosen from a list of the persons submitted to the CFO by the Florida Council on Economic Education. The appointed members are to represent urban and rural interests and the ethnic and cultural diversity of the state's population. Each member of the Council will serve without compensation, but receive reimbursement for per diem and travel expenses pursuant to s. 112.061, F.S.

The bill requires the Council to study financial problems affecting consumers (particularly young persons, seniors, working adults, and small businesses) due to a lack of knowledge of basic financial issues. The Council is to develop written materials to educate consumers and small businesses about basic financial issues and establish an outreach program by providing education through meetings, seminars, or by web-based media.

The bill allows the Council to apply for and accept funds, grants, gifts, and services from the state, the federal government or any of its agencies, or any other public or private source for the purpose of

³ www.fcee.org/main.aspx?id=2

⁴ www.sba.gov/sbdc/aboutus.html

⁵ www.score.org

⁶ www.fljumpstart.org

⁷ www.nfcc.org/AboutUs/nfccfactsbckgnd.pdf

offsetting any clerical and administrative costs associates with the Council's duties. The bill directs all funds received by the Council to be deposited into the Administrative Trust Fund and provides that the funds are appropriated for use by the Council in carrying out its duties and to defray expense incurred for administrative duties.

The bill appropriates \$50,000 in nonrecurring funds to the Council for the 2006-07 fiscal year, contingent on receipt of private or grant funds by the Council.

Beginning January 1, 2008, the Council is to report annually to the Governor, the Speaker of the House of Representatives, and the President of the Senate on the activities carried out by the Council.

C. SECTION DIRECTORY:

Section 1 creates an unnumbered section of law creating the Financial Literacy Council; providing for the purpose of the Council; providing the composition of the Council; providing the procedures for meetings, record keeping, and compensation of members of the Council; providing powers and duties of the Council; establishing provisions for resources for the council; and providing requirements for reports of the Council.

Section 2: The bill appropriates \$50,000 in nonrecurring funds to the Council for the 2006-07 fiscal year, contingent on receipt of private or grant funds by the Council.

Section 3: provides that the act will take effect July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None. The Department of Financial Services (DFS) indicates that the Council could apply for grant funds.

2. Expenditures:

The bill appropriates \$50,000 in nonrecurring funds to the Council for the 2006-07 fiscal year, contingent on receipt of private or grant funds by the Council.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The mandates provision does not apply because this bill does not: require counties or municipalities to spend funds or to take an action requiring the expenditure of funds; reduce the authority that municipalities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with counties or municipalities.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No exercise of rule-making authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to the Financial Literacy Council;
creating the council; providing purposes; providing for
membership; providing for meetings, procedures, records,
and reimbursement for travel and per diem expenses;
prohibiting compensation for council members; providing
powers and duties of the council; providing for resources
of the council; requiring that any funds received by the
council be deposited in the Administrative Trust Fund;
providing for expiration of the council; requiring annual
reports to the Governor and Legislature; providing a
contingent appropriation; providing for construction;
providing a limitation on expenditures of certain grant
funds; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Financial Literacy Council.--

(1) CREATION.--The Financial Literacy Council is created
within the Department of Financial Services. The council shall
provide information and education about financial issues to
consumers and small businesses.

(2) PURPOSES.--The purposes of the council are to:

(a) Provide a single state resource for consumers and
small businesses to contact for financial assistance.

(b) Equip small businesses, young people, working adults,
and seniors with the tools and resources they need to make
informed financial decisions.

29 (c) Help residents of this state learn more about personal
30 finance issues, including, but not limited to, personal savings,
31 applying for loans, managing debt, making sound investment
32 choices, and saving for retirement.

33 (d) Facilitate the sharing of best practices for financial
34 management that are characteristic of highly successful small
35 businesses.

36 (e) Serve as an educational forum for resource planning,
37 financial planning, and management issues for small businesses.

38 (3) COMPOSITION.--

39 (a) Members of the council shall include the Chief
40 Financial Officer, or her or his designee, who shall serve as
41 chair, and not more than nine other members to be appointed by
42 the Chief Financial Officer. Six members must be persons with
43 experience in various areas of the financial industry, such as
44 banking, finance, insurance, real estate, and securities. At
45 least one member must be a person who is not employed by and is
46 not a representative of the financial industry. At least one
47 member must be chosen from a list of three persons submitted to
48 the Chief Financial Officer by a senior advocacy group. At least
49 one member must be chosen from a list of three persons submitted
50 to the Chief Financial Officer by the Florida Council on
51 Economic Education. Appointed members shall include persons who
52 represent rural and urban interests and the ethnic and cultural
53 diversity of the state's population.

54 (b) Members of the council shall serve at the pleasure of
55 the Chief Financial Officer. The council shall meet at the call
56 of the chair. Five of the initial members appointed to the

57 council shall be appointed for terms of 3 years. All other
58 members shall be appointed for terms of 4 years. Members shall
59 serve until their successors are appointed. A vacancy shall be
60 filled for the remainder of the unexpired term.

61 (c) The Department of Financial Services shall provide
62 administrative and staff support to the council.

63 (4) MEETINGS; PROCEDURES; RECORDS; COMPENSATION.--

64 (a) The business of the council shall be presented to the
65 council in the form of an agenda. The agenda shall be set by the
66 Chief Financial Officer and shall include items of business
67 requested by the council members.

68 (b) A majority of the members shall constitute a quorum,
69 and action by a majority of a quorum shall be official.

70 (c) The council shall make a report of each meeting to the
71 Chief Financial Officer. The report shall show the names of the
72 members present and shall include a record of the council's
73 discussions, recommendations, and actions taken. The Chief
74 Financial Officer shall keep the records of the proceedings of
75 each meeting on file and shall make the records available to any
76 interested person or group.

77 (d) Council members shall serve without compensation.
78 However, each council member is entitled to reimbursement for
79 per diem and travel expenses pursuant to s. 112.061, Florida
80 Statutes.

81 (5) POWERS AND DUTIES.--

82 (a) The council shall study financial problems that affect
83 consumers, particularly young persons, seniors, and working
84 adults, and small businesses which arise from a lack of basic

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85 knowledge of financial issues.

86 (b) The council shall develop written materials that shall
87 be available to educate consumers and small businesses about
88 basic financial issues.

89 (c) The council shall establish an outreach program to
90 help educate affected persons through public meetings or
91 seminars or through web-based media.

92 (6) RESOURCES.--

93 (a) The council may apply for and accept funds, grants,
94 gifts, and services from the state, the government of the United
95 States or any of its agencies, or any other public or private
96 source for the purpose of defraying clerical and administrative
97 costs as may be necessary in carrying out its duties under this
98 section. All sums received by the council shall be deposited
99 into the Administrative Trust Fund. The moneys received and
100 deposited into the trust fund are appropriated for use by the
101 council in carrying out its duties as prescribed by this section
102 and to the department to defray the expenses incurred in the
103 discharge of its administrative duties as prescribed by this
104 section.

105 (b) The council shall seek out and wherever possible use
106 the talents, expertise, and resources within the state, and
107 especially those of the public school, community college, and
108 state university systems, in furtherance of its mission.

109 (c) The council may procure information and assistance
110 from any state agency, political subdivision, municipal
111 corporation, or public officer.

112 (d) The council may coordinate with any state agency, any

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113 political subdivision, or any school district of the state in
114 the furtherance of its mission.

115 (7) EXPIRATION.--The council shall cease to exist on
116 December 31, 2011.

117 (8) REPORTS.--Beginning January 1, 2008, the council shall
118 report annually on January 1 to the Governor, the President of
119 the Senate, and the Speaker of the House of Representatives on
120 the activities carried out under this section.

121 Section 2. For the 2006-2007 fiscal year, the sum of
122 \$50,000 in nonrecurring funds is appropriated from the
123 Administrative Trust Fund in the specific appropriation category
124 "Financial Literacy Council" to the Financial Literacy Council
125 created by this act. The appropriation is contingent upon
126 receipt of grant funds or private contributions by the council
127 for the purposes of this act. This section does not entitle the
128 Financial Literacy Council to expend funds from the
129 Administrative Trust Fund in an amount greater than the amount
130 of grant funds or private contributions received by the council
131 and deposited into the Administrative Trust Fund pursuant to
132 this act.

133 Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 825**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Economic Development, Trade &
Banking Committee
Representative(s) Altman offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Financial Literacy Council.--

(1) CREATION.--A council, as defined in s. 20.03, Florida Statutes, named the Financial Literacy Council, is created as an adjunct to the Department of Financial Services. The council shall be subject to the provisions of s. 20.052, Florida Statutes.

(2) PURPOSE.--The purpose of the council is to study financial problems that affect consumers, particularly young persons, seniors, and working adults, and small businesses which arise from a lack of basic knowledge of financial issues and to provide recommendations to the Department of Financial Services which will assist the department in developing financial literacy programs and resources and providing a single state resource for financial literacy for the general public in order to empower individuals and businesses to manage their financial matters in order to reduce debt, increase savings, and avoid

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

23 bankruptcy. All recommendations are subject to approval by the
24 Chief Financial Officer.

25 (3) COMPOSITION.--

26 (a) The council shall consist of nine members who shall be
27 appointed by and serve at the pleasure of the Chief Financial
28 Officer. Six members must be persons having experience in
29 various areas of the financial industry, such as financial
30 institutions, as defined in s. 655.005, Florida Statutes,
31 finance, insurance, real estate, and securities. At least one
32 member must be a person who is not employed by and is not a
33 representative of the financial industry. At least one member
34 must be chosen from a list of three persons submitted to the
35 Chief Financial Officer by a senior advocacy group. At least one
36 member must be chosen from a list of three persons submitted to
37 the Chief Financial Officer by the Florida Council on Economic
38 Education. Appointed members shall include persons who represent
39 rural and urban interests and the ethnic and cultural diversity
40 of the state's population.

41 (b) The council shall meet at the call of the chair, who
42 shall be elected by vote of a majority of the council at its
43 first meeting, which shall be called by the Chief Financial
44 Officer. Five of the initial members appointed to the council
45 shall be appointed for terms of 3 years. All other members shall
46 be appointed for terms of 4 years. Members shall serve until
47 their successors are appointed. A vacancy shall be filled for
48 the remainder of the unexpired term.

49 (c) Council members shall serve without compensation.
50 However, each council member is entitled to reimbursement for
51 per diem and travel expenses pursuant to s. 112.061, Florida
52 Statutes.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

53 (d) The Department of Financial Services shall provide
54 administrative and staff support to the council.

55 (4) MEETINGS; PROCEDURES; RECORDS.--

56 (a) The business of the council shall be presented to the
57 council in the form of an agenda. The agenda shall be set by the
58 Chief Financial Officer and shall include items of business
59 requested by the council members.

60 (b) A majority of the members constitutes a quorum, and
61 action by a majority of a quorum shall be official.

62 (c) The minutes for each meeting shall be submitted to the
63 Chief Financial Officer within 14 days after the date of each
64 meeting.

65 (5) POWERS AND DUTIES.--The council shall:

66 (a) Study financial problems that affect consumers,
67 particularly young persons, seniors, and working adults, and
68 small businesses which arise from a lack of basic knowledge of
69 financial issues.

70 (b) Study and make recommendations to the department
71 regarding the creation of a single state resource for consumers
72 and small businesses to contact for financial assistance.

73 (c) Study and make recommendations as to how the
74 department may help equip small businesses, young people,
75 working adults, and seniors with the tools and resources they
76 need to make informed financial decisions.

77 (d) Study and make recommendations as to how the
78 department may help residents of this state learn more about
79 personal finance issues, including, but not limited to, personal
80 savings, applying for loans, managing debt, making sound
81 investment choices, and saving for retirement.

82 (e) Study and make recommendations to the department
83 regarding the development of best practices for financial

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

84 management which are characteristic of highly successful small
85 businesses.

86 (f) Study and make recommendations as to how the
87 department can serve as an educational forum for resource
88 planning, financial planning, and management issues for small
89 businesses.

90 (g) Assist the department in developing written materials
91 that shall be available to educate consumers and small
92 businesses about basic financial issues.

93 (h) Study and make recommendations to the department
94 regarding the establishment of an outreach program to help
95 educate affected persons through public meetings or seminars or
96 through web-based media.

97 (6) RESOURCES.--

98 (a) The council may apply for and accept funds, grants,
99 gifts, and services from the state, the government of the United
100 States or any of its agencies, or any other public or private
101 source for the purpose of defraying clerical and administrative
102 costs as necessary to carry out its duties under this section.
103 All sums received by the council shall be deposited into the
104 Department of Financial Services Administrative Trust Fund. The
105 moneys received and deposited into the trust fund are
106 appropriated for use by the council in carrying out its duties
107 as prescribed by this section.

108 (b) The council shall seek out and, wherever possible, use
109 the talents, expertise, and resources within the state, and
110 especially those of the public school, community college, and
111 state university systems, in furtherance of its mission.

112 (c) The council may procure information and assistance
113 from any state agency, political subdivision, municipal
114 corporation, or public officer.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

115 (d) The council may coordinate with any state agency, any
116 political subdivision, or any school district of the state in
117 the furtherance of its mission.

118 (7) EXPIRATION.--The council shall cease to exist on
119 December 31, 2011. Upon expiration, any funds remaining in the
120 Financial Literacy Council account of the Department of
121 Financial Services Administrative Trust Fund shall be
122 appropriated to the department to fund the activities that the
123 department has implemented pursuant to the recommendations of
124 the council.

125 (8) REPORTS.--Beginning January 1, 2008, the council shall
126 report annually on January 1 to the Governor, the President of
127 the Senate, and the Speaker of the House of Representatives on
128 the activities carried out under this section, including
129 expenditures and funding.

130 Section 2. For the 2006-2007 fiscal year, the sum of
131 \$50,000 in nonrecurring funds is appropriated from the
132 Department of Financial Services Administrative Trust Fund in
133 the specific appropriation category "Financial Literacy Council"
134 to the Financial Literacy Council created by this act. The
135 appropriation is contingent upon prior receipt of grant funds or
136 private contributions by the council for the purposes of this
137 act. This section does not entitle the Financial Literacy
138 Council to expend funds from the Administrative Trust Fund in an
139 amount greater than the amount of grant funds or private
140 contributions received by the council and deposited into the
141 Administrative Trust Fund pursuant to this act.

142 Section 3. This act shall take effect July 1, 2006.
143
144

145 ===== T I T L E A M E N D M E N T =====

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Remove the entire title and insert:

A bill to be entitled

An act relating to the Financial Literacy Council;
creating the council; providing purposes; providing for
membership; providing for reimbursement for per diem and
travel expenses; providing for meetings, procedures, and
records; providing powers and duties of the council;
providing for resources of the council; requiring that any
funds received by the council be deposited in the
Administrative Trust Fund; providing for expiration of the
council; requiring annual reports to the Governor and
Legislature; providing a contingent appropriation;
providing for construction; providing a limitation on
expenditures of certain grant funds; providing an
effective date.

HOUSE OF REPRESENTATIVES LOCAL BILL STAFF ANALYSIS

BILL #: HB 847

City of Jacksonville, Duval County

SPONSOR(S): Mahon

TIED BILLS:

IDEN./SIM. BILLS:

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Local Government Council</u>	<u>8 Y, 0 N</u>	<u>Camechis</u>	<u>Hamby</u>
2) <u>Economic Development, Trade & Banking Committee</u>		<u>Olmedillo</u>	<u>Carlson</u>
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill amends provisions of the City of Jacksonville Charter regarding the Jacksonville Economic Development Commission (Commission) in order to:

- Increase the number of Commission board members from seven to nine, three of whom must reside, work, or own property within the Jacksonville Downtown Area;
- Remove special act authority of the Jacksonville Downtown Development Authority, Jacksonville Sports Development Authority, Jacksonville International Airport Community Redevelopment Authority, and Cecil Field Development Commission to act as advisory boards to the Commission;
- Revise the list of persons who act in an advisory capacity to the Commission;
- Authorize the Commission to establish special or standing committees to advise the Commission on policy or strategic planning matters and establish the Downtown Committee of the Commission as a permanent standing committee; and
- Repeal special laws establishing the Jacksonville Downtown Development Authority as an advisory body of the Commission.

On December 13, 2005, the Jacksonville City Council adopted a resolution in support of this legislation.

According to the Economic Impact Statement, no fiscal impacts are anticipated in fiscal year 2005-06 or 2006-07.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The City of Jacksonville and Duval County merged in 1968¹, creating a single consolidated government entity (City) governing all of Duval County with the exception of the beach communities (Atlantic Beach, Neptune Beach and Jacksonville Beach) and Baldwin. The City government operates under a mayor as head of the administrative branch and the City Council as the legislative branch.

Jacksonville Economic Development Commission

The Jacksonville Economic Development Commission (Commission) was created in 1997 when the Legislature amended the City's charter in ch. 97-339, L.O.F. According to the "whereas" clauses in that legislation, economic development was an issue addressed by many agencies, authorities, departments and other entities in the City. The Commission was created to provide a focal point for economic development in the City that would result in centralization of economic development programs under one "umbrella" agency, ensuring a more efficient and practical means of addressing the goals, objectives, and strategies for economic development in the City.

The Commission is an autonomous body within the Office of the Mayor and is designated as the sole community redevelopment agency for the City under ch. 163, F.S., and as the sole industrial development authority for the City under ch. 159, F.S., with authority over all economic development functions within the City.

The Commission is governed by seven members, consisting of the chairman of the Jacksonville Downtown Development Authority and six members who are residents of the City. Commission members are appointed by the mayor and confirmed by the City Council. Each Commission member serves a 2-year term or until a successor is appointed. Commission members serve as commissioners of the community redevelopment agency under ch. 163, F.S., and as members of the industrial development authority under ch. 159, F.S.

When the Legislature created the Commission in 1997, the powers, duties, functions, liabilities, property, and personnel of the following entities, except for their advisory and fact-finding responsibilities, were transferred to the Commission:

- Jacksonville Downtown Development Authority;
- Jacksonville Sports Development Authority;
- Jacksonville International Airport Community Redevelopment Authority; and
- Cecil Field Development Commission.

Effect of Proposed Changes

Under this bill, the Jacksonville Downtown Development Authority, Jacksonville Sports Development Authority, Jacksonville International Airport Community Redevelopment Authority, and Cecil Field

¹ Ch. 67-1320, L.O.F.

Development Commission will no longer serve as advisory boards to the Commission. However, the Sports and Entertainment Board is authorized by local ordinance to serve the Commission in an advisory capacity and a representative of the board will serve as a technical support advisor to the Commission as required by this bill. The bill also provides for a representative of the Jacksonville International Airport Authority to serve as a technical advisor to the Commission.

The bill authorizes the Commission to establish special or standing committees to advise the Commission on policy or strategic planning matters. Each committee chair must be a member of the Commission. The Chair of the Commission appoints all committee members upon recommendation of the chair of each committee. Advisory committee members may or may not be Commission members. Committee members serve at the will of the Commission Chair for terms not to exceed 4 years.

The bill specifically establishes the Downtown Committee of the Commission as a permanent standing committee. The Downtown Committee functions as an advisory body to the Commission to undertake fact-finding on downtown issues and provide advice to the Commission on issues of importance to the downtown area. The Commission is required to provide the Downtown Committee with all resources necessary for the Committee to perform its duties and responsibilities, including staff. The Chair of the Downtown Committee must reside, work, or own property within the downtown area.

This bill increases the number of members of the Commission from seven to nine, all of whom must be residents of the City and at least three of whom must reside, work, or own property within the Jacksonville Downtown Area.

On December 13, 2005, the Jacksonville City Council adopted Resolution 2005-1360-A in support of this legislation.

C. SECTION DIRECTORY:

- Section 1. Amends Article 24 of the City of Jacksonville Charter to revise the membership of the Jacksonville Economic Development Commission; revise the list of persons who serve as advisors to the Commission; eliminate special law advisory board status of several local entities; and authorize creation of advisory committees by the Commission.
- Section 2. Repeals Article 20 of ch. 93-341, L.O.F., as amended by ch. 97-339, L.O.F., to remove the Jacksonville Downtown Development Authority as an advisory board to the Commission.
- Section 3. Provides an effective date.

II. NOTICE/REFERENDUM AND OTHER REQUIREMENTS

A. NOTICE PUBLISHED? Yes ☒ No ☐

IF YES, WHEN? October 26, 2005

WHERE? Financial News & Daily Record, Jacksonville, Duval County, Florida

B. REFERENDUM(S) REQUIRED? Yes ☐ No ☒

IF YES, WHEN? N/A

C. LOCAL BILL CERTIFICATION FILED? Yes, attached ☒ No ☐

D. ECONOMIC IMPACT STATEMENT FILED? Yes, attached ☒ No ☐

III. COMMENTS

A. CONSTITUTIONAL ISSUES: None.

B. RULE-MAKING AUTHORITY: This bill does not provide or amend rulemaking authority.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Susan Stewart, representing the Duval County Legislative Delegation, indicated that "[t]his legislation is required in order to streamline the JEDC project approval process. The proposed changes will enhance staff efficiency and effectiveness and allow the commission to more aggressively promote economic development opportunities in the community. The proposed changes to the Jacksonville Economic Development Commission will streamline the economic development approval process for all economic development projects. The revised structure will raise the priority of downtown redevelopment efforts to the commission level which will create a more efficient and effective project approval process. The proposed changes will also enhance staff efficiency by aligning staff efforts with the commission's strategic plan and goals."

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

Not applicable.

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A bill to be entitled

An act relating to the City of Jacksonville, Duval County; amending chapter 97-339, Laws of Florida, as amended; defining terms; restructuring the Jacksonville Economic Development Commission by increasing the number of members of the commission; revising membership qualification requirements; removing provisions relating to staggering of terms; revising provisions pertaining to ex officio and technical support advisors; removing provisions relating to duties of the executive director and to a prior transfer of certain functions and personnel; authorizing the chair of the commission to appoint special or standing committees for certain purposes; providing duties of the chair of the commission; providing for appointment of committee members and terms thereof; creating a downtown committee; providing duties and responsibilities of the downtown committee; repealing Article 20 of chapter 92-341, Laws of Florida, as amended, relating to the Jacksonville Downtown Development Authority; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Sections 24.02, 24.03, 24.04, 24.05, 24.06, and 24.08 of Article 24 of chapter 97-339, Laws of Florida, as amended by chapter 99-443, Laws of Florida, are amended, and section 24.13 of that article is created, to read:

ARTICLE 24.

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CODING: Words ~~stricken~~ are deletions; words underlined are additions.

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THE JACKSONVILLE ECONOMIC DEVELOPMENT COMMISSION

Section 24.02. Definitions.--As used in this article:

(1) "Commission" means the Jacksonville Economic Development Commission.

(2) "City" and "City of Jacksonville" mean the City of Jacksonville created pursuant to s. 9 of Art. VIII of the 1885 Constitution of the State of Florida.

(3) "Council" means the council of the City of Jacksonville.

(4) "Downtown committee" means the permanent committee within the commission assigned to focus on the revitalization and redevelopment of the Jacksonville Downtown Area.

(5) "Jacksonville Downtown Area" means the Downtown Overlay Zone area, as defined in the Jacksonville Zoning Code, as it may be amended from time to time.

(6)~~(4)~~ "Mayor" means the mayor of the City of Jacksonville.

(7)~~(5)~~ "Executive Director" means the executive director of the commission.

(8)~~(6)~~ "Code" means the Ordinance Code of the City of Jacksonville.

Section 24.03. Commission membership.--The membership of the commission is established at nine ~~seven~~ members, ~~consisting of the chairman of the Downtown Development Authority and six members,~~ who shall be residents of the City of Jacksonville and who shall be appointed by the mayor and confirmed by the Council. The mayor shall appoint a chairman who shall serve until such time as another chairman may be appointed by the

57 mayor. At least three members of the commission shall reside,
58 work, or own property in the Jacksonville Downtown Area. Each
59 member of the commission shall serve a term of two years or
60 until a successor is appointed. ~~Apart from the chairman of the~~
61 ~~Downtown Development Authority, of the members first appointed,~~
62 ~~three members shall serve terms of 1 year each, and the~~
63 ~~remaining three members shall serve terms of 2 years each.~~
64 ~~Thereafter all members appointed to the commission shall serve~~
65 ~~terms of 2 years.~~ No member appointed to the commission for
66 three consecutive full terms shall be eligible for appointment
67 to a next succeeding term. The members shall serve as
68 commissioners of the community redevelopment agency under part
69 III, chapter 163, Florida Statutes, and they shall also serve as
70 members of the industrial development authority under part III,
71 chapter 159, Florida Statutes. All business of the commission
72 shall be conducted at meetings wherein at least four members of
73 the commission are present and voting.

74 Section 24.04. Individual Ex Officio Advisors to the
75 commission.--The following individual ex officio advisors are
76 named to assist the commission in an advisory or fact-finding
77 role as may be requested individually or collectively of them by
78 the commission so as to effectuate the centralized economic
79 development goals of the commission. No ex officio advisor shall
80 serve simultaneously as both an ex officio advisor and as an
81 appointed member of the commission. These individual ex officio
82 advisors shall be:

83 (1) The president of the Council of the City of
84 Jacksonville or his or her designee.

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85 (2) The Managing Director/Chief Executive Officer of the
86 JEA Jacksonville Electric Authority.

87 (3) The Managing Director of the Jacksonville
88 Transportation Authority.

89 (4) The President/Chief Executive Officer of the
90 Jacksonville Port Authority.

91 (5) The President/Chief Executive Officer of the
92 Jacksonville Aviation Authority ~~Chairman of the Sports and~~
93 ~~Entertainment Board~~.

94 ~~(6) The Chairman of the Cecil Field Development~~
95 ~~Commission~~.

96 ~~(7) The Chairman of the Jacksonville International Airport~~
97 ~~Community Redevelopment Authority~~.

98 ~~(6)-(8)~~ The Executive Director of the Jacksonville Housing
99 Commission ~~Duval County Housing Finance Authority~~.

100 ~~(7)-(9)~~ The Chairman of the Duval County State Legislative
101 Delegation or his or her designee, who shall be a member of the
102 delegation.

103 ~~(8)-(10)~~ The Chairman of the NAACP or his or her designee.

104 ~~(9)-(11)~~ The Chairman of the Urban League or his or her
105 designee.

106 Section 24.05. Technical support advisors to the
107 commission.--The following individual technical support advisors
108 are named to assist the commission in such technical support
109 roles as may be requested individually or collectively of them
110 by the commission so as to effectuate the centralized economic
111 development goals of the commission. These individual technical

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support advisors shall be the directors or the board members, as appropriate, of the following entities:

- (1) The Planning and Development Department of the city.
- (2) The Jacksonville Film Commission.
- (3) Sister cities.
- (4) International Relations and Marketing Development Commission.
- (5) Jacksonville Sports and Entertainment Board Research and Development Authority.
- (6) Jacksonville Enterprise Zone Development Agency.
- (7) Northwest Jacksonville Economic Development Fund Advisory Committee.
- (8) Overall Economic Development Plan Committee.
- (9) Jacksonville Economic Development Company.
- (10) Enterprise North Florida Corporation.
- (11) City departments as appropriate.
- (12) Jacksonville International Airport Community Redevelopment Area Board Small Business Advisory Committee.
- (13) Tourist Development Council.
- (14) Convention and Visitor Bureau.
- (15) The Superintendent of Duval County Public Schools.
- (16) The President of the University of North Florida.
- (17) The President of Florida Community College, Jacksonville.

Section 24.06. Executive Director.--The chief operating officer of the commission shall be its executive director, who shall be appointed by the mayor after consultation with the commission. The executive director shall be responsible for

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140 managing the affairs of the commission subject to its
141 supervision and shall serve at the pleasure of the mayor. The
142 executive director shall also serve as an administrative aide to
143 the mayor and ~~in that capacity shall serve as the mayor's~~
144 ~~liaison to the Downtown Development Authority and shall attend~~
145 ~~all meetings of that authority.~~ The executive director will
146 employ the personnel to administer and operate the commission in
147 accordance with applicable law, available appropriations and
148 employee authorizations. The executive director shall have such
149 other duties and responsibilities as required by the commission.
150 The executive director's salary shall be set by the mayor after
151 consultation with the commission.

152 Section 24.08. Transfer of functions and personnel.--On
153 July 1, 1997, the powers, duties, functions, liabilities,
154 property and personnel of certain entities shall be transferred
155 to and become the responsibility of the Jacksonville Economic
156 Development Commission, ~~as it is intended that these entities~~
157 ~~become advisory bodies to the commission which shall succeed to~~
158 ~~their former duties, responsibilities and functions.~~ Any
159 ordinance or law, the provisions of which conflict with the
160 transfer authorized and mandated in this act are repealed to the
161 extent of such conflict. Those entities whose powers, duties,
162 functions, liabilities, property and personnel shall be
163 transferred to the commission are:

164 (1) The Jacksonville Downtown Development Authority,
165 ~~except for its advisory and fact-finding responsibilities.~~

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166 (2) The Jacksonville Sports Development Authority created
167 under chapter 89-509, Laws of Florida, ~~except for its advisory~~
168 ~~and fact-finding responsibilities.~~

169 (3) The Economic Development Division of the Planning and
170 Development Department as set forth in the Jacksonville City
171 Code, including, but not limited to, chapter 30, part 7,
172 including all boards and commissions concerned with economic
173 development which are staffed by the division.

174 (4) Any existing authority, functions or personnel held by
175 the Jacksonville International Airport Community Redevelopment
176 Authority. ~~Upon completion of this transition, the Jacksonville~~
177 ~~International Airport Community Redevelopment Authority shall~~
178 ~~continue to function in the nature of an advisory and fact-~~
179 ~~finding body to the commission concerning the area formerly~~
180 ~~under its jurisdiction.~~

181 (5) Any existing authority, functions or personnel held by
182 the Cecil Field Development Commission, including any personnel
183 under the authority of the mayor who are similarly assigned.
184 ~~Upon completion of this transition, the Cecil Field Development~~
185 ~~Commission shall continue to function in the nature of an~~
186 ~~advisory and fact-finding body to the commission concerning the~~
187 ~~area formerly under its jurisdiction.~~

188 (6) On July 1, 1997, all of the employees of the
189 organizations listed above, both appointed and within the
190 classified civil service of the city, shall be transferred to
191 the commission and shall become appointed employees of the
192 commission. These employees shall not retain any civil service
193 status that they may have had prior to becoming an employee of

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194 the commission unless any civil service employee who is to be
195 transferred elects to retain his or her civil service status and
196 in such case he or she shall serve as an employee of the
197 commission with no loss in civil service status or benefits that
198 he or she may have accrued prior to transfer.

199 Section 24.13. Committees.--

200 (1) The chair of the commission may appoint special or
201 standing committees to advise the commission on policy or
202 strategic planning matters. The chair of the commission shall
203 appoint a chair of each committee, and each committee chair
204 shall be a member of the commission. The chair of the commission
205 shall appoint all special or standing committee members upon
206 recommendation from the chair of each committee. Such advisory
207 committee members may consist of commission members or
208 noncommission members. All committee members shall serve at the
209 will of the chair of the commission for terms not to exceed 4
210 years as specified by the chair.

211 (2) Central to the mission of the commission is the
212 revitalization and development of a healthy and vibrant
213 Jacksonville Downtown Area. There is hereby created the downtown
214 committee of the commission, which shall be a permanent
215 committee of the commission. The downtown committee shall
216 function as an advisory body to the commission to undertake
217 fact-finding on downtown issues and provide advice to the
218 commission on issues of importance to the Jacksonville Downtown
219 Area. The downtown committee shall have and perform such other
220 duties and responsibilities as the commission may assign to it
221 from time to time. The commission shall be responsible for and

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222 shall provide to the downtown committee all resources necessary
 223 for the committee to effectively achieve its duties and
 224 responsibilities. Such resources shall include staff assigned to
 225 work on downtown redevelopment matters by the executive director
 226 of the commission. The chair of the commission shall appoint a
 227 chair of the downtown committee, and such committee chair shall
 228 be a commission member who resides, works, or owns property in
 229 the Jacksonville Downtown Area.

230 Section 2. Article 20 of chapter 92-341, Laws of Florida,
 231 as amended by chapter 97-339, Laws of Florida, is repealed.



232 Section 3. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 865
SPONSOR(S): Quinones
TIED BILLS:

Enterprise Zone Incentives to Serve the Uninsured

IDEN./SIM. BILLS: SB 2588

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee		Olmedillo 	Carlson 
2) Health Care General Committee			
3) Finance & Tax Committee			
4) Commerce Council			
5) _____			

SUMMARY ANALYSIS

The bill creates a tax exemption on the purchase and use of medical property by a health care facility or community health care center providing primary care services to the uninsured and located in an enterprise zone. The bill provides the following:

- A definition of exempt medical property.
- A limit on the property subject to refund of the first \$100,000 in the property purchased.
- Procedures and requirement for approval from the Office of Tourism, Trade and Economic Development (OTTED), and the Department of Revenue (DOR).
- Rulemaking authority for DOR.
- Assessment of penalties and interest in the event DOR determines medical property for which a refund is sought has been used outside an enterprise zone.
- Expiration date concurrent with the Florida Enterprise Zone Act.
- Requirement that one of the commissioners of an enterprise zone development agency be employed or work in the health care field.

The Revenue Estimating Conference has not estimated the fiscal impact of the bill as filed.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Lower Taxes – The bill creates a tax exemption for health care facilities and community health care centers providing services to the uninsured and located in an enterprise zone.

B. EFFECT OF PROPOSED CHANGES:

Present Situation:

Florida Enterprise Zone Program

The Florida Enterprise Zone Act (act), codified in ss. 290.001-290.016, F.S., was created:

to provide the necessary means to assist local communities, their residents, and the private sector in creating the proper economic and social environment to induce the investment of private resources in productive business enterprises located in severely distressed areas and to provide jobs for residents of such areas.¹

The Florida Enterprise Zone Act of 1994 was scheduled to be repealed on December 31, 2005, but was re-enacted as the Florida Enterprise Zone Act (act) by ch. 2005-287, L.O.F., for an additional ten years, and is now scheduled to be repealed December 31, 2015.

Under the act, areas of the state meeting specified criteria, including suffering from pervasive poverty, unemployment, and general distress, have been designated as enterprise zones. The act established a process for the nomination and designation of a maximum of 20 enterprise zones in 1994.²

Subsequently, the Legislature has designated additional zones. Currently, there are 55 enterprise zones in the state. When the Enterprise Zone Act was re-enacted by ch. 2005-287, L.O.F., the 53 existing enterprise zones were allowed to apply for re-designation; 51 of 53 have been re-designated. Four of the 55 enterprise zones were created by ch. 2005-244, L.O.F.: City of Lakeland, Indian River County, Sumter County, and Orange County. There are also three Federal Enterprise Communities and two Federal Empowerment Zones. Certain federal, state, and local incentives are authorized to induce private businesses to invest in these enterprise zones.

State Incentives

The program's incentives are as follows:

- Jobs credit against sales or corporate income taxes: In order to be eligible, businesses must increase the number of full time jobs. The credit amount varies based on job location and wage of employee.³
- Property tax credit: New, expanded, or rebuilt businesses located within an enterprise zone are allowed a credit on their Florida corporate income tax based on the amount of property taxes paid.⁴
- Sales tax refund for building materials: A refund is available for sales taxes paid on the purchase of building materials used in the rehabilitation of real property in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20

¹ Section 290.003, F.S.

² Sections 290.0055 and 290.0065, F.S.

³ Sections 212.096 and 220.181, F.S.

⁴ Section 220.182, F.S.

percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.⁵

- Sales tax refund for business property used in an enterprise zone: A refund is available for sales taxes paid on the purchase of business property with a purchase price of \$5,000 or more purchased by and for use in a business located in an enterprise zone. The amount of the refund is the lesser of 97 percent of the sales taxes paid or \$5,000, or, if 20 percent or more of the business's employees reside in an enterprise zone, the lesser of 97 percent of the sales taxes paid or \$10,000.⁶

Local Incentives

The following are examples of local incentives:

- Sales tax exemption for electrical energy used in an enterprise zone: A sales tax exemption (state and local taxes) is available to qualified businesses located in an enterprise zone on the purchase of electrical energy. This exemption is only available if the municipality in which the business is located has passed an ordinance to exempt the municipal utility taxes on such business.⁷
- Economic development ad valorem tax exemption: Up to 100 percent of the assessed value of improvements to real or tangible property of a new or expanded business located in an enterprise zone may be exempted from property taxes if the voters of a municipality authorize the governing body of the municipality to grant such exemptions.⁸
- Occupational license tax exemption: By ordinance, the governing body of a municipality may exempt 50 percent of the occupational license tax for businesses located in an enterprise zone.⁹
- Local impact fee abatement or reduction, or low-interest or interest-free loans, or grants to businesses.¹⁰

State Agencies

The Governor's Office of Tourism, Trade, and Economic Development (OTTED) administers the Florida Enterprise Zone Act; the Department of Revenue (DOR) reviews and approves or denies a business's application for enterprise zone tax credits; and Enterprise Florida, Inc., is responsible for marketing the act.

Medical Equipment Exemption

Current law exempts medical products and supplies or medicine dispensed according to a prescription and common household remedies.¹¹ In addition, the law grants an exemption for prosthetic and orthopedic appliances.¹²

Effect of Proposed Changes:

Medical Sales and Use Tax Exemption

The bill creates a tax exemption on the purchase and use of medical property by a health care facility or community health care center providing primary care services to the uninsured and located in an enterprise zone. The bill specifies that medical property consist of medical appliances, prosthetic devices, and equipment, to include, without limitation, oxygen equipment, respiratory therapy equipment, physical and occupational therapy patient care equipment, and intermittent positive pressure breathing circuits, devices, and supplies.

⁵ Section 212.08(5)(g), F.S.

⁶ Section 212.08(5)(h), F.S.

⁷ Sections 212.08(15) and 166.231(8), F.S.

⁸ Section 196.1995, F.S.

⁹ Section 205.054, F.S.

¹⁰ Section 290.0057(1)(e), F.S.

¹¹ Section 212.08(2)(a), F.S.

¹² Id.

The bill limits the exemption of medical property to the first \$100,000 in the aggregate, for each health care facility or community health care center, and provides that the exemption inures to the benefit of the health care facility or community health care center as a refund of previously paid taxes.

The bill requires that a facility or center must first seek approval from OTTED. Specifically, the bill provides that the applicant must complete an application, under oath, that includes information such as the name and address of the facility, the identifying number assigned to the enterprise zone in which the facility is located, a specific description of the medical property for which a refund is sought, the location of the medical property, and specific proof of the purchase of the medical property.

The bill allots OTTED 10 working days from receipt of the application to review it and determine the applicant's eligibility. If the applicant meets all relevant criteria, OTTED must certify the applicant as eligible to receive the refund.

Thereafter, the certified applicant shall file a refund request with DOR, no later than 6 months after the tax is due on the medical property for which the applicant is seeking a refund. The bill requires DOR to make the refund within 30 days of its approval. The bill provides DOR rulemaking authority to implement the provisions of this bill.

The bill provides that the provisions of s. 212.095, F.S. (limiting actions, including audits and refunds during audits) do not apply to refund applications pursuant to this section.

In the event DOR determines that any of the medical property for which a refund is sought is used outside a facility or center, the applicant shall immediately return the refund amount, interest on that amount from the date of purchase, and penalties.

The bill provides that the provisions of the bill expire concurrently with the expiration of the Florida Enterprise Zone Act.

The bill requires that one of the commissioners of an enterprise zone development agency must be employed or work in the health care field, and provides for appointment only when a position becomes vacant after July 1, 2006.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.08, F.S., to create a sales and use tax exemption, provide a cap, provide procedures, provide rulemaking authority, provide penalties for a violation, and provide an expiration date.

Section 2: Amends s. 290.0056, F.S., to provide an additional requirement for the enterprise zone development agency board of commissioners and to provide a cross reference.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference has not estimated the fiscal impact of the bill as filed.

2. Expenditures:

The Revenue Estimating Conference has not estimated the fiscal impact of the bill as filed.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference has not estimated the fiscal impact of the bill as filed.

2. Expenditures:

The Revenue Estimating Conference has not estimated the fiscal impact of the bill as filed.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will provide an exemption to health care facilities and community health care centers serving the uninsured and located in an enterprise zone.

D. FISCAL COMMENTS:

The Revenue Estimating Conference has not estimated the fiscal impact of the bill as filed.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides DOR with rulemaking authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Office of Tourism, Trade & Economic Development expressed the following concerns regarding this bill:

- OTTED is not in close enough proximity to the centers or facilities to review and certify applications of eligibility. OTTED recommends that the governing body or enterprise zone development agency be responsible for reviewing and certifying the applications of eligibility similar to their responsibility within seven other Enterprise Zone tax incentives.
- OTTED recommends that the proposed language requiring a new member of the EZDA board to be employed in the health care field be revised to recommend, rather than require, that a new member of the EZDA Board be employed in the health care field, similar to the other members of the EZDA Board.

The Florida Department of Revenue expressed the following concerns regarding this bill:

- The terms listed as "medical property" on page 2, lines 37 through 42, of the bill are not defined, and it is unclear how broadly these terms are intended to be applied.
- It is unclear whether the \$100,000 cap is intended to allow the exemption for each purchase of such equipment, or whether is intended to be limited to one purchase for the duration of the program.
- It is unclear how this credit is intended to relate to enterprise zone business property refund under paragraph 212.08(5)(h), F.S. It appears that some of the equipment would qualify for either of these refunds.
- Page 2, line 44, of the bill exempts purchases of the types of items listed earlier in the bill language. It does not limit the exemption to sales tax.

- This bill does not restrict the refunds amount to 97% of the tax paid up to \$5,000, like the enterprise zone building materials refunds. It is unclear if this was intentional.
- There is no time requirement that the property for which the refund is sought be used exclusively in the enterprise zone.
- There is no stated time after which a facility or center may transfer or dispose of the medical property without violation the provisions of the bill.
- The effective date does not provide DOR with sufficient time to promulgate rules.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled

2 An act relating to enterprise zone incentives to serve the
3 uninsured; amending s. 212.08, F.S.; providing for an
4 exemption by refund from the tax on sales, use, and other
5 transactions of certain medical property purchased and
6 used by certain health care facilities or community health
7 centers located in enterprise zones; providing a
8 limitation; providing application requirements; providing
9 procedures and limitations for the refund; providing
10 duties of the Office of Tourism, Trade, and Economic
11 Development; providing duties of the Department of
12 Revenue; requiring the department to adopt rules;
13 providing for return of the refund under certain
14 circumstances; providing for expiration under certain
15 circumstances; amending s. 290.0056, F.S.; providing an
16 additional requirement for the membership of an enterprise
17 zone development agency board of commissioners under
18 certain circumstances; providing a limitation; providing
19 an effective date.

20
21 WHEREAS, the Legislature finds that making high quality
22 health care available to the citizens of this state is an
23 overwhelming public necessity, NOW, THEREFORE,

24
25 Be It Enacted by the Legislature of the State of Florida:
26

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Section 1. Paragraph (k) of subsection (2) of section 212.08, Florida Statutes, is redesignated as paragraph (l), and a new paragraph (k) is added to that subsection, to read:

212.08 Sales, rental, use, consumption, distribution, and storage tax; specified exemptions.--The sale at retail, the rental, the use, the consumption, the distribution, and the storage to be used or consumed in this state of the following are hereby specifically exempt from the tax imposed by this chapter.

(2) EXEMPTIONS; MEDICAL.--

(k)1. Medical property consisting of medical appliances, prosthetic devices, and equipment, including, but not limited to, oxygen equipment, respiratory therapy equipment, physical and occupational therapy patient care equipment, and intermittent positive pressure breathing circuits, devices, and supplies, purchased and used by any health care facility or community health center providing primary care services to the uninsured and located in an enterprise zone are exempt. The exemption applies only to the first \$100,000 of such property in the aggregate for each health care facility or community health center. This exemption inures to such facility or center only through a refund of previously paid taxes. A refund shall be authorized upon an affirmative showing by the taxpayer to the satisfaction of the department that the requirements of this paragraph have been met.

2. To receive a refund, the facility or center must file under oath with the Office of Tourism, Trade, and Economic Development an application which includes:

55 a. The name and address of the facility or center claiming
56 the refund.

57 b. The identifying number assigned pursuant to s. 290.0065
58 to the enterprise zone in which the facility or center is
59 located.

60 c. A specific description of the medical property for
61 which a refund is sought, including its serial number or other
62 permanent identification number.

63 d. The location of the medical property.

64 e. The sales invoice or other proof of purchase of the
65 medical property, showing the amount of sales tax paid, the date
66 of purchase, and the name and address of the sales tax dealer
67 from whom the medical property was purchased.

68 3. Within 10 working days after receipt of an application,
69 the Office of Tourism, Trade, and Economic Development shall
70 review the application to determine if the application contains
71 all the information required pursuant to subparagraph 2. and
72 meets the criteria set out in this paragraph. The office shall
73 certify all applications that contain the information required
74 pursuant to subparagraph 2. and that meet the criteria set out
75 in this subparagraph as eligible to receive a refund.

76 4. An application for a refund pursuant to this paragraph
77 must be submitted to the department within 6 months after the
78 tax is due on the medical property that is purchased.

79 5. The provisions of s. 212.095 do not apply to any refund
80 application made pursuant to this paragraph. A refund approved
81 pursuant to this paragraph shall be made within 30 days after

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formal approval by the department of the application for the refund.

6. The department shall adopt rules governing the manner and form of refund applications and may establish guidelines as to the requisites for an affirmative showing of qualification for exemption under this paragraph.

7. If the department determines that any of the medical property is used outside a facility or center which received a refund under this paragraph, the amount of taxes refunded to the facility or center purchasing such medical property shall immediately be due and payable to the department by the business, together with the appropriate interest and penalty, computed from the date of purchase, in the manner provided by this chapter.

8. This paragraph expires on the date specified in s. 290.016 for the expiration of the Florida Enterprise Zone Act.

Section 2. Subsection (2) and paragraph (a) of subsection (9) of section 290.0056, Florida Statutes, are amended to read:

290.0056 Enterprise zone development agency.--

(2) When the governing body creates an enterprise zone development agency, that body shall appoint a board of commissioners of the agency, which shall consist of not fewer than 8 or more than 13 commissioners. The governing body may appoint at least one representative from each of the following: the local chamber of commerce; local financial or insurance entities; local businesses and, where possible, businesses operating within the nominated area; the residents residing within the nominated area; nonprofit community-based

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organizations operating within the nominated area; the regional workforce board; the local code enforcement agency; and the local law enforcement agency. One of the commissioners on the board must be employed in or work in the health care field, provided such requirement applies only when a position on the board becomes vacant after July 1, 2006, and appointment of a new commissioner is required to fill the vacancy or an additional member is to be appointed after July 1, 2006. The terms of office of the commissioners shall be for 4 years, except that, in making the initial appointments, the governing body shall appoint two members for terms of 3 years, two members for terms of 2 years, and one member for a term of 1 year; the remaining initial members shall serve for terms of 4 years. A vacancy occurring during a term shall be filled for the unexpired term. The importance of including individuals from the nominated area shall be considered in making appointments. Further, the importance of minority representation on the agency shall be considered in making appointments so that the agency generally reflects the gender and ethnic composition of the community as a whole.

(9) The following powers and responsibilities shall be performed by the governing body creating the enterprise zone development agency acting as the managing agent of the enterprise zone development agency, or, contingent upon approval by such governing body, such powers and responsibilities shall be performed by the enterprise zone development agency:

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136 (a) To review, process, and certify applications for state
 137 enterprise zone tax incentives pursuant to ss. 212.08(2)(k),
 138 (5)(g) and (h), and (15); 212.096; 220.181; and 220.182.
 139 Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 865**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Economic Development, Trade &
Banking Committee
Representative(s) Quinones offered the following:

Amendment (with title amendment)

Remove everything after the enacting clause and insert:

Section 1. Paragraph (r) of subsection (5) of section
212.08, Florida Statutes, is created to read:

(5) EXEMPTIONS; ACCOUNT OF USE.--

(r) Medical equipment and supplies used in an enterprise
zone.--

1. Beginning on January 1, 2007, medical equipment and
supplies purchased for use by health care facilities that serve
uninsured patients located in an enterprise zone which are
subsequently used in an enterprise zone shall be exempt from the
tax imposed by this chapter. This exemption inures to the health
care facility only through a refund of previously paid taxes. A
refund shall be authorized upon an affirmative showing by the
taxpayer to the satisfaction of the department that the
requirements of this paragraph have been met.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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22 2. To receive a refund, the health care facility must file
23 under oath with the governing body or enterprise zone
24 development agency having jurisdiction over the enterprise zone
25 where the health care facility is located, as applicable, an
26 application which includes:

27 a. The name and address of the health care facility
28 claiming the refund.

29 b. The identifying number assigned pursuant to s. 290.0065
30 to the enterprise zone in which the health care facility is
31 located.

32 c. A specific description of the medical equipment for
33 which a refund is sought, including their serial numbers or
34 other permanent identification numbers.

35 d. A specific description of the medical supplies for
36 which a refund is sought, including serial or lot numbers or
37 other numbers identifying the purchased supplies.

38 e. The sales invoice or other proof of purchase of the
39 medical equipment or supplies, showing the amount of sales tax
40 paid, the date of purchase, and the name and address of the
41 sales tax dealer from whom the medical equipment and supplies
42 were purchased.

43 f. A statement that the health care facility serves
44 uninsured patients.

45 g. A statement defining the taxpayer's taxable year.

46 3. Within 10 working days after receipt of an application,
47 the governing body or enterprise zone development agency shall
48 review the application to determine if it contains all the
49 information required pursuant to subparagraph 2. and meets the
50 criteria set out in this paragraph. The governing body or agency
51 shall certify all applications that contain the information
52 required pursuant to subparagraph 2. and meet the criteria set

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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53 out in this paragraph as eligible to receive a refund. The
54 certification shall be in writing, and a copy of the
55 certification shall be transmitted to the executive director of
56 the Department of Revenue. The health care facility shall be
57 responsible for forwarding a certified application to the
58 department within the time specified in subparagraph 4.

59 4. An application for a refund pursuant to this paragraph
60 must be submitted to the department within 6 months after the
61 close of the taxable year during which the eligible medical
62 equipment or supplies were purchased.

63 5. The provisions of s. 212.095 do not apply to any refund
64 application made pursuant to this paragraph. This exemption
65 shall apply to the first \$500,000 of taxable medical equipment
66 and supplies purchased by a health care facility and used in the
67 facility in any taxable year. No refund shall be granted under
68 this paragraph unless the amount to be refunded exceeds \$100 in
69 sales tax paid on purchases made within a 60-day time period. No
70 refund shall be granted under this paragraph for medical
71 equipment or supplies eligible for exemption pursuant to s.
72 212.08(2), or eligible for a refund pursuant to s. 212.08(5)(h).

73 6. The department shall adopt rules governing the manner
74 and form of refund applications and may establish guidelines as
75 to the requisites for an affirmative showing of qualification
76 for exemption under this paragraph.

77 7. If the department determines that the medical equipment
78 and supplies are used outside an enterprise zone within 3 years
79 from the date of purchase, the amount of taxes refunded to the
80 health care facility purchasing such medical equipment and
81 supplies shall immediately be due and payable to the department
82 by the health care facility, together with the appropriate
83 interest and penalty, computed from the date of purchase, in the

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

84 manner provided by this chapter. Notwithstanding this sub-
85 paragraph, a health care facility may dispose of disposable
86 supplies according to law.

87 8. The department shall deduct an amount equal to 10
88 percent of each refund granted under the provisions of this
89 paragraph from the amount transferred into the Local Government
90 Half-cent Sales Tax Clearing Trust Fund pursuant to s. 212.20
91 for the county area in which the medical equipment and supplies
92 are located and shall transfer that amount to the General
93 Revenue Fund.

94 9. For the purposes of this exemption, "medical equipment"
95 means durable medical equipment that can be used repeatedly that
96 serves a medical purpose in the diagnosis, treatment or care of
97 an individual.

98 10. For the purposes of this exemption, "medical supplies"
99 means items that are consumable, expendable, disposable or non-
100 durable that serve a medical purpose in the diagnosis,
101 treatment or care of an individual.

102 11. For the purposes of this exemption, "health care
103 facility" means a facility licensed pursuant to chapter 395 or a
104 county health department, a children's medical services program,
105 a federally qualified health center, a federally funded migrant
106 health center, rural clinic, or other publicly funded community
107 health program, and other programs designated by the Department
108 of Health as a community health center that provide primary care
109 services to the uninsured.

110 12. This paragraph expires on the date specified in s.
111 290.016 for the expiration of the Florida Enterprise Zone Act.

112 Section 2. Subsection (2) and paragraph (a) of subsection
113 (9) of section 290.0056, Florida Statutes, are amended to read:

114 290.0056 Enterprise zone development agency.--

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

(2) When the governing body creates an enterprise zone development agency, that body shall appoint a board of commissioners of the agency, which shall consist of not fewer than 8 or more than 13 commissioners. The governing body may appoint at least one representative from each of the following: the local chamber of commerce; local financial or insurance entities; local businesses and, where possible, businesses operating within the nominated area; the residents residing within the nominated area; nonprofit community-based organizations operating within the nominated area; health care facilities operating within the nominated area; the regional workforce board; the local code enforcement agency; and the local law enforcement agency. One of the commissioners on the board may be employed in the health care field, provided such requirement applies only when a position on the board becomes vacant after July 1, 2007, and appointment of a new commissioner is required to fill the vacancy or an additional member is to be appointed after July 1, 2007. The terms of office of the commissioners shall be for 4 years, except that, in making the initial appointments, the governing body shall appoint two members for terms of 3 years, two members for terms of 2 years, and one member for a term of 1 year; the remaining initial members shall serve for terms of 4 years. A vacancy occurring during a term shall be filled for the unexpired term. The importance of including individuals from the nominated area shall be considered in making appointments. Further, the importance of minority representation on the agency shall be considered in making appointments so that the agency generally reflects the gender and ethnic composition of the community as a whole.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

(9) The following powers and responsibilities shall be performed by the governing body creating the enterprise zone development agency acting as the managing agent of the enterprise zone development agency, or, contingent upon approval by such governing body, such powers and responsibilities shall be performed by the enterprise zone development agency:

(a) To review, process, and certify applications for state enterprise zone tax incentives pursuant to ss. 212.08 (5)(g), (h), (r) and (15); 212.096; 220.181; and 220.182.

Section 3. This act shall take effect January 1, 2007.

===== T I T L E A M E N D M E N T =====

Remove the entire title and insert:

A bill to be entitled

An act relating to enterprise zone incentives to serve the uninsured; amending s. 212.08, F.S.; providing for an exemption by refund from the tax on sales, use, and other transactions of certain medical equipment and supplies purchased and used by certain health care facilities or community health centers located in enterprise zones; providing a limitation; providing application requirements; providing procedures and limitations for the refund; providing duties of the local governing body or enterprise zone development agency; providing duties of the Department of Revenue; requiring the department to adopt rules; providing for return of the refund under certain circumstances; providing definitions; providing for expiration under certain circumstances; amending s. 290.0056, F.S.; providing an additional recommendation for the membership of an enterprise zone development agency

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

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175 | board of commissioners under certain circumstances;
176 | providing a limitation; providing an effective date.
177 |

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1143
SPONSOR(S): McInvale
TIED BILLS:

Economic Development Incentives

IDEN./SIM. BILLS: SB 350

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Economic Development, Trade & Banking Committee		Olmedillo <i>JO</i>	Carlson <i>MWC</i>
2) Finance & Tax Committee			
3) Commerce Council			
4) _____			
5) _____			

SUMMARY ANALYSIS

The bill requires the Department of Revenue (DOR) to distribute monthly, to qualified local governments, one-half of the proceeds of the sales tax collections generated by the use and operations of eligible convention centers and reported on the convention center's sales and use tax return. The eligible convention centers must be certified pursuant to new s. 288.1171, F.S. Distributions cannot exceed \$1 million per fiscal year for each eligible local government and are capped at \$5 million per state fiscal year. Such distributions are required to begin 60 days following certification. Distributions may only be used to encourage and provide economic development for the attraction, recruitment, and retention of corporate headquarters and of high-technology, manufacturing, research and development, entertainment, and tourism industries as designated by the unit of local government by resolution of its governing body and to assist the eligible convention centers to attract more business and expand their offerings, including developing their own events and shows. The bill provides for the apportionment by the Department of Revenue of sales tax proceeds in the case where the fiscal year cap of \$5 million is exceeded. The bill provides for the repeal of the incentive June 30, 2009

The bill creates s. 288.1171, F.S., which states that the Office of Tourism, Trade, and Economic Development (OTTED) shall adopt rules to screen applicants and certify those meeting the criteria as an "eligible convention center." The criteria for eligibility for each center include that it:

- must be owned by a unit of local government,
- must contain more than 60,000 square feet of exhibit space,
- must be certified by resolution as serving a public purpose, and
- must be located in a county levying a local option tourist development tax under s. 125.0104, F.S.¹

The Auditor General may audit to verify the expenditure of the distributions and pursue recovery in the event of an expenditure violation.

The bill will take effect on July 1, 2006

¹ Currently, 58 counties charge a local tourist development tax. See www.taxlaw.state.fl.us.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Provide Limited Government- The bill provides the Office of Tourism, Trade, and Economic Development the authority to adopt rules for the receipt and processing of applications for funding.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Economic Incentives in Florida

Several incentive programs are available to attract, recruit, and retain businesses in Florida. The majority of the programs are coordinated and administered by the Office of Tourism, Trade, and Economic Development (OTTED) and Enterprise Florida, Inc. Enterprise Florida has overall responsibility for the retention and recruitment of businesses to the state. The Legislature has expressed its intent in s. 288.90151(2), F.S., for Enterprise Florida to work with local economic development entities to maximize the state and local return-on-investment to create jobs for Floridians.

The Qualified Targeted Industry (QTI) Tax Refund Program is one of the state's key economic development incentives. The QTI program encourages quality job growth in targeted high-wage, value-added businesses. Approved businesses receive refunds on taxes paid (corporate income, sales, and certain other taxes) for creating new jobs in specified industry categories.² This program defines a "target industry business" as a corporate headquarters business or any business that is engaged in one of the target industries identified pursuant to the following criteria developed by OTTED in consultation with Enterprise Florida, Inc.:

- Future growth. – Industry forecasts should indicate strong expectation for future growth in both employment and output, according to the most recent available data. Special consideration should be given to Florida's growing access to international markets or to replacing imports.
- Stability. – The industry should not be subject to periodic layoffs, whether due to seasonality or sensitivity to volatile economic variables such as weather. The industry should also be relatively resistant to recession, so that the demand for products of this industry is not necessarily subject to decline during an economic downturn.
- High wage. – The industry should pay relatively high wages compared to statewide or area averages.
- Market and resource independent. – The location of industry businesses should not be dependent on Florida markets or resources as indicated by industry analysis.
- Industrial base diversification and strengthening. – The industry should contribute toward expanding or diversifying the state's or area's economic base, as indicated by analysis of employment and output shares compared to national and regional trends. Special consideration should be given to industries that strengthen regional economies by adding value to basic products or building regional industrial clusters as indicated by industry analysis.
- Economic benefits. – The industry should have strong positive impacts on or benefits to the state and regional economies.³

² Section 288.106, F.S.

³ Section 288.106(1)(o), F.S.

The High-Impact Business Performance Incentive (HIPI) Grant is an incentive used to attract and grow high-impact facilities.⁴ These incentive programs apply to high technology and manufacturing businesses but not necessarily to tourism-related businesses.

Chapter 212, F.S., governs taxes on sales, use, and other transactions. Section 212.20, F.S., governs the distribution of some of those funds collected by the Department of Revenue (DOR). Several provisions within s. 212.20, F.S., provide economic assistance to certain industries. For example, facilities designated as new professional sports franchises or facilities for a retained professional sports franchise receive funding distributions from DOR after certification by OTTED.⁵ OTTED grants or denies certification using criteria set out in s. 288.1162, F.S. Other examples include the Professional Golf Hall of Fame facility,⁶ certified pursuant to s. 288.1168, F.S., and the International Game Fish Association World Center facility,⁷ certified pursuant to s. 288.1169, F.S. Recipients receive a fixed monthly distribution of sales tax revenues set by statute for a fixed number of years.

The criteria used by OTTED for certification include items such as the relationship with and support of a local unit of government, projections for paid attendance, and demonstration of the financial capability to provide more than one-half of the costs incurred or related to the improvement or development of the facility. Other requirements generally include reviews, recertification, sanctions, audits, and a prohibition of additional certifications for the same facility.

Technology Business Promotion in Florida

Enterprise Florida is required to create programs for the attraction, development, and retention of information technology businesses to the state.⁸ Regarding the marketing of the state for information technology businesses, s. 288.911(2)(b), F.S., states that “[e]fforts to promote this state as a high-technology business leader must include identification and coordination of existing business technology resources, partnerships with economic development organizations and private sector businesses, continued retention and growth of businesses based in this state that produce high-technology products or use high-technology skills for manufacturing, and recruitment of new business in such area.”

Convention Centers in Florida

At this time, there are ten convention centers in the state that contain at least 60,000 square feet of exhibit space:

- Orange County Convention Center (2,100,000 sq. ft.)
- Miami Beach Convention Center (502,848 sq. ft.)
- Palm Beach County Convention Center (100,000 sq. ft.)
- Broward County Convention Center (199,526 sq. ft.)
- Tampa Convention Center (200,000 sq. ft.)
- Coconut Grove Convention Center (150,000 sq. ft.)
- Lakeland Center (100,000 sq. ft.)
- Prime F. Osborn III Convention Center in Jacksonville (100,000 sq. ft.)
- Expo Centre in Orlando (65,200)
- Ocean Center in Volusia (60,000)

⁴ Section 288.108, F.S.

⁵ Section 212.20(6)(d)7.b., F.S.

⁶ Section 212.20(6)(d)7.c., F.S.

⁷ Section 212.20(6)(d)7.d., F.S.

⁸ Section 288.911, F.S.

The Orange County Convention Center, Tampa Convention Center, Coconut Grove Convention Center, and Lakeland Center are publicly owned and managed.⁹

Proposed Changes

The bill amends s. 212.20(6)(d)7., F.S., to require the Department of Revenue (DOR) to distribute monthly, to qualified local governments, one-half of the proceeds of the sales tax collections generated by the use and operations of eligible convention centers and reported on the convention center's sales and use tax return. The eligible convention centers must be certified pursuant to new s. 288.1171, F.S. Distributions cannot exceed \$1 million per fiscal year for each eligible local government and are capped at \$5 million per state fiscal year. Such distributions are required to begin 60 days following certification. The bill provides for the apportionment by the Department of Revenue of sales tax proceeds in the case where the fiscal year cap of \$5 million is exceeded.

Distributions may only be used to encourage and provide economic development for the attraction, recruitment, and retention of corporate headquarters and of high-technology, manufacturing, research and development, entertainment, and tourism industries as designated by the unit of local government by resolution of its governing body and to assist the eligible convention centers to attract more business and expand their offerings, including developing their own events and shows. The bill provides for the repeal of the incentive on June 30, 2009.

The bill creates s. 288.1171, F.S., which states that the Office of Tourism, Trade, and Economic Development (OTTED) shall adopt rules to screen applicants and certify those meeting the criteria as an "eligible convention center." The criteria for eligibility for each center include that it:

- must be owned by a unit of local government,
- must contain more than 60,000 square feet of exhibit space,
- must be certified by resolution as serving a public purpose, and
- must be located in a county levying a local option tourist development tax under s. 125.0104, F.S.

Previously certified applicants are ineligible for additional certifications.

Funds distributed to a local government are required to be used for the economic development purposes set forth above as designated in a resolution adopted by the governing board of the local government. The Auditor General may audit to verify the expenditure of the distributions and pursue recovery in the event of an expenditure violation. The bill provides that failure to use the funds pursuant to the bill is grounds for revoking certification. The bill provides for the repeal of s. 288.1171, F.S., on June 30, 2009.

C. SECTION DIRECTORY:

Section 1: Amends s. 212.20, F.S., relating to the distribution of proceeds from tax on sales, use, and other transactions; establishing provisions for monthly distributions to eligible units of local government; providing definitions; providing limits for distributions; providing for the apportionment by the Department of Revenue of sales tax proceeds in the case where the fiscal year cap of is exceeded; providing a repeal date of June 30, 2008.

Section 2: Creates s. 288.1171, F.S., providing a certification process for a local government applicant owning a convention center; providing the Office of Tourism, Trade, and Economic Development rule making authority for the receipt and processing of applications for funding; providing definitions; establishing conditions; establishing provisions for use of funding; providing authority for audits from the Department of Revenue; providing a repeal date of June 30, 2009.

⁹ Revenue Impact Conference, March 3, 2006, Report on HB 1143, *available at* http://www.state.fl.us/edr/Conferences/Revenue_Impact/impact.htm

Section 3: Provides effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

The Revenue Estimating Conference met on March 3, 2006, and found the following impact:

General Revenue	FY 06-07	FY 07-08
	(3.4)	(4.5)

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

The Revenue Estimating Conference met on March 3, 2006, and found the following impact:

Local Revenue	FY 06-07	FY 07-08
	(0.7)	(0.9)

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenues.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

The bill provides the Office of Tourism, Trade, and Economic Development the authority to adopt rules for the receipt and processing of applications for funding.

C. DRAFTING ISSUES OR OTHER COMMENTS:

Section 215.97, F.S., Florida Single Audit Act, currently requires an audit of the use of the distributions by any eligible convention center receiving distributions. Therefore, provisions requiring the Auditor General to perform a financial audit of the distributions made to any eligible convention center may be redundant.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

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A bill to be entitled

An act relating to economic development incentives; amending s. 212.20, F.S.; providing for distribution of a portion of revenues from the tax on sales, use, and other transactions to specified units of local government owning eligible convention centers; providing limitations; requiring the Department of Revenue to prescribe certain forms; providing for future repeal; creating s. 288.1171, F.S.; providing for certification by the Office of Tourism, Trade, and Economic Development of units of local government owning eligible convention centers; requiring the office to adopt specified rules; providing a definition; providing requirements for certification; providing for use of proceeds distributed to units of local government under the act; providing for audits by the Auditor General; providing for revocation of certification; providing for future repeal; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (d) of subsection (6) of section 212.20, Florida Statutes, is amended to read:

212.20 Funds collected, disposition; additional powers of department; operational expense; refund of taxes adjudicated unconstitutionally collected.--

(6) Distribution of all proceeds under this chapter and s. 202.18(1)(b) and (2)(b) shall be as follows:

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29 (d) The proceeds of all other taxes and fees imposed
30 pursuant to this chapter or remitted pursuant to s. 202.18(1)(b)
31 and (2)(b) shall be distributed as follows:

32 1. In any fiscal year, the greater of \$500 million, minus
33 an amount equal to 4.6 percent of the proceeds of the taxes
34 collected pursuant to chapter 201, or 5 percent of all other
35 taxes and fees imposed pursuant to this chapter or remitted
36 pursuant to s. 202.18(1)(b) and (2)(b) shall be deposited in
37 monthly installments into the General Revenue Fund.

38 2. Two-tenths of one percent shall be transferred to the
39 Ecosystem Management and Restoration Trust Fund to be used for
40 water quality improvement and water restoration projects.

41 3. After the distribution under subparagraphs 1. and 2.,
42 8.814 percent of the amount remitted by a sales tax dealer
43 located within a participating county pursuant to s. 218.61
44 shall be transferred into the Local Government Half-cent Sales
45 Tax Clearing Trust Fund. Beginning July 1, 2003, the amount to
46 be transferred pursuant to this subparagraph to the Local
47 Government Half-cent Sales Tax Clearing Trust Fund shall be
48 reduced by 0.1 percent, and the department shall distribute this
49 amount to the Public Employees Relations Commission Trust Fund
50 less \$5,000 each month, which shall be added to the amount
51 calculated in subparagraph 4. and distributed accordingly.

52 4. After the distribution under subparagraphs 1., 2., and
53 3., 0.095 percent shall be transferred to the Local Government
54 Half-cent Sales Tax Clearing Trust Fund and distributed pursuant
55 to s. 218.65.

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56 5. After the distributions under subparagraphs 1., 2., 3.,
57 and 4., 2.0440 percent of the available proceeds pursuant to
58 this paragraph shall be transferred monthly to the Revenue
59 Sharing Trust Fund for Counties pursuant to s. 218.215.

60 6. After the distributions under subparagraphs 1., 2., 3.,
61 and 4., 1.3409 percent of the available proceeds pursuant to
62 this paragraph shall be transferred monthly to the Revenue
63 Sharing Trust Fund for Municipalities pursuant to s. 218.215. If
64 the total revenue to be distributed pursuant to this
65 subparagraph is at least as great as the amount due from the
66 Revenue Sharing Trust Fund for Municipalities and the former
67 Municipal Financial Assistance Trust Fund in state fiscal year
68 1999-2000, no municipality shall receive less than the amount
69 due from the Revenue Sharing Trust Fund for Municipalities and
70 the former Municipal Financial Assistance Trust Fund in state
71 fiscal year 1999-2000. If the total proceeds to be distributed
72 are less than the amount received in combination from the
73 Revenue Sharing Trust Fund for Municipalities and the former
74 Municipal Financial Assistance Trust Fund in state fiscal year
75 1999-2000, each municipality shall receive an amount
76 proportionate to the amount it was due in state fiscal year
77 1999-2000.

78 7. Of the remaining proceeds:

79 a. In each fiscal year, the sum of \$29,915,500 shall be
80 divided into as many equal parts as there are counties in the
81 state, and one part shall be distributed to each county. The
82 distribution among the several counties shall begin each fiscal
83 year on or before January 5th and shall continue monthly for a

84 total of 4 months. If a local or special law required that any
85 moneys accruing to a county in fiscal year 1999-2000 under the
86 then-existing provisions of s. 550.135 be paid directly to the
87 district school board, special district, or a municipal
88 government, such payment shall continue until such time that the
89 local or special law is amended or repealed. The state covenants
90 with holders of bonds or other instruments of indebtedness
91 issued by local governments, special districts, or district
92 school boards prior to July 1, 2000, that it is not the intent
93 of this subparagraph to adversely affect the rights of those
94 holders or relieve local governments, special districts, or
95 district school boards of the duty to meet their obligations as
96 a result of previous pledges or assignments or trusts entered
97 into which obligated funds received from the distribution to
98 county governments under then-existing s. 550.135. This
99 distribution specifically is in lieu of funds distributed under
100 s. 550.135 prior to July 1, 2000.

101 b. The department shall distribute \$166,667 monthly
102 pursuant to s. 288.1162 to each applicant that has been
103 certified as a "facility for a new professional sports
104 franchise" or a "facility for a retained professional sports
105 franchise" pursuant to s. 288.1162. Up to \$41,667 shall be
106 distributed monthly by the department to each applicant that has
107 been certified as a "facility for a retained spring training
108 franchise" pursuant to s. 288.1162; however, not more than
109 \$208,335 may be distributed monthly in the aggregate to all
110 certified facilities for a retained spring training franchise.
111 Distributions shall begin 60 days following such certification

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112 and shall continue for not more than 30 years. Nothing contained
113 in this paragraph shall be construed to allow an applicant
114 certified pursuant to s. 288.1162 to receive more in
115 distributions than actually expended by the applicant for the
116 public purposes provided for in s. 288.1162(6). However, a
117 certified applicant is entitled to receive distributions up to
118 the maximum amount allowable and undistributed under this
119 section for additional renovations and improvements to the
120 facility for the franchise without additional certification.

121 c. Beginning 30 days after notice by the Office of
122 Tourism, Trade, and Economic Development to the Department of
123 Revenue that an applicant has been certified as the professional
124 golf hall of fame pursuant to s. 288.1168 and is open to the
125 public, \$166,667 shall be distributed monthly, for up to 300
126 months, to the applicant.

127 d. Beginning 30 days after notice by the Office of
128 Tourism, Trade, and Economic Development to the Department of
129 Revenue that the applicant has been certified as the
130 International Game Fish Association World Center facility
131 pursuant to s. 288.1169, and the facility is open to the public,
132 \$83,333 shall be distributed monthly, for up to 168 months, to
133 the applicant. This distribution is subject to reduction
134 pursuant to s. 288.1169. A lump sum payment of \$999,996 shall be
135 made, after certification and before July 1, 2000.

136 e. The department shall distribute monthly to units of
137 local government that have been certified as owning eligible
138 convention centers pursuant to s. 288.1171 an amount equal to 50
139 percent of the proceeds, as defined in this sub-subparagraph,

140 received and collected in the previous month by the department
141 under the provisions of this chapter which are generated by such
142 eligible convention centers and remitted on the sales and use
143 tax returns of eligible convention centers. Proceeds, for the
144 purposes of this sub-subparagraph, are limited to all applicable
145 sales taxes collected by an eligible convention center for
146 standard services provided by center staff to users of the
147 center, which include the following: parking, admission and
148 ticket sales, food services, utilities services, space rentals,
149 equipment rentals, security services, decorating services,
150 business services, advertising services, communications
151 services, exhibit supply sales and rentals, locksmith services,
152 and sales of gifts and sundries. The total distribution to each
153 unit of local government shall not exceed \$1 million per state
154 fiscal year. However, total distributions to all units of local
155 government shall not exceed \$5 million per state fiscal year,
156 and such distribution shall be limited exclusively to the taxes
157 collected and remitted under the provisions of this chapter. If
158 collections and remittances of eligible convention centers
159 exceed the \$5-million maximum amount authorized for
160 distribution, the department shall distribute proceeds to each
161 eligible unit of local government using an apportionment factor,
162 the numerator of which is the amount remitted by an eligible
163 convention center and the denominator is the total amount
164 remitted by all eligible convention centers. The apportionment
165 factor for each eligible convention center shall be applied to
166 the \$5-million maximum amount authorized for distribution to
167 determine the amount that shall be distributed to each local

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168 government unit. The department shall prescribe forms required
169 to be filed with the department by eligible convention centers.
170 Distributions shall begin 60 days following notification of
171 certification by the Office of Tourism, Trade, and Economic
172 Development pursuant to s. 288.1171. Distributions shall be used
173 solely to encourage and provide economic development for the
174 attraction, recruitment, and retention of corporate headquarters
175 and of high-technology, manufacturing, research-and-development,
176 entertainment, and tourism industries as designated by the unit
177 of local government by resolution of its governing body, and to
178 assist the eligible convention centers to attract more business
179 and expand their offerings, including developing their own
180 events and shows. This sub-subparagraph is repealed June 30,
181 2009.

182 8. All other proceeds shall remain with the General
183 Revenue Fund.

184 Section 2. Section 288.1171, Florida Statutes, is created
185 to read:

186 288.1171 Convention centers owned by units of local
187 government; certification as owning eligible convention centers;
188 duties.--

189 (1) The Office of Tourism, Trade, and Economic Development
190 shall serve as the state agency for screening applicants for
191 state funding pursuant to s. 212.20(6)(d)7.e. and for certifying
192 an applicant as owning an eligible convention center.

193 (2) The Office of Tourism, Trade, and Economic Development
194 shall adopt rules pursuant to ss. 120.536(1) and 120.54 for the
195 receipt and processing of applications for funding pursuant to

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s. 212.20(6)(d)7.e.

(3) As used in this section, the term "eligible convention center" means a publicly owned facility having exhibition space in excess of 60,000 square feet, the primary function of which is to host meetings, conventions, or trade shows.

(4) Prior to certifying an applicant as owning an eligible convention center, the Office of Tourism, Trade, and Economic Development must determine that:

(a) The unit of local government, as defined in s. 218.369, owns an eligible convention center.

(b) The convention center contains more than 60,000 square feet of exhibition space.

(c) The unit of local government in which the convention center is located has certified by resolution after a public hearing that the application serves a public purpose pursuant to subsection (7).

(d) The convention center is located in a county that is levying a tourist development tax pursuant to s. 125.0104.

(5) Upon certification of an applicant, the Office of Tourism, Trade, and Economic Development shall notify the executive director of the Department of Revenue of such certification by means of an official letter granting certification. The Department of Revenue shall not begin distributing proceeds until 60 days following notice by the Office of Tourism, Trade, and Economic Development that a unit of local government has been certified as owning an eligible convention center.

(6) An applicant previously certified under any provision

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of this section who has received proceeds under such
certification is not eligible for an additional certification.

(7) A unit of local government certified as owning an
eligible convention center may use proceeds provided pursuant to
s. 212.20(6)(d)7.e. solely to encourage and provide economic
development for the attraction, recruitment, and retention of
corporate headquarters and of high-technology, manufacturing,
research-and-development, entertainment, and tourism industries
as designated by the unit of local government by resolution of
its governing body, and to assist the eligible convention
centers to attract more business and expand their offerings,
including developing their own events and shows.

(8) The Auditor General may conduct an audit as provided
in s. 11.45 to verify that the distributions under this section
have been expended as required by this section. If the Auditor
General determines that the distributions have not been expended
as required by this section, the Auditor General may pursue
recovery of such proceeds and the unit of local government shall
be further barred from receiving future distributions of
proceeds authorized by this section.

(9) Failure to use the proceeds as provided in this
section shall be grounds for revoking certification.

(10) This section is repealed June 30, 2009.

Section 3. This act shall take effect July 1, 2006.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **HB 1143**

COUNCIL/COMMITTEE ACTION

ADOPTED	___	(Y/N)
ADOPTED AS AMENDED	___	(Y/N)
ADOPTED W/O OBJECTION	___	(Y/N)
FAILED TO ADOPT	___	(Y/N)
WITHDRAWN	___	(Y/N)
OTHER	_____	

1 Council/Committee hearing bill: Economic Development, Trade &
2 Banking Committee
3 Representative(s) McInvale offered the following:

Amendment (title amendment)

6 Remove line(s) 236-243 and renumber subsequent subsections.



9 ===== T I T L E A M E N D M E N T =====

10 Remove line(s) 15-16 and insert:
11 local government under the act; providing for revocation of

000000

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: PCB EDTB 06-03 Internet Phishing
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee		Olmedilla 	Carlson 
1) _____	_____	_____	_____
2) _____	_____	_____	_____
3) _____	_____	_____	_____
4) _____	_____	_____	_____
5) _____	_____	_____	_____

SUMMARY ANALYSIS

This bill creates the "Anti-Phishing Act of 2006" and will prohibit the acquisition of personal identifying information from a Florida resident through the use of a website or e-mail with the intent to possess or use such information fraudulently.

The bill creates a civil cause of action for Internet access providers, financial institutions, web page or trademark owners harmed by a violation, and the Attorney General.

The bill provides these plaintiffs with the power to seek injunctive relief and damages in the greater amount of the actual damages arising from the violation, or \$5,000 for each violation of the same nature. A court may increase damages to three times the actual damages sustained if violations constitute a pattern. The bill does not preclude the award of damages otherwise available under federal or state law.

The bill provides for an award of attorney's fees and costs to a prevailing plaintiff.

The bill establishes personal jurisdiction for a violator, sets venue in any county where the plaintiff resides or where any part of the action occurred, and creates a three year statute of limitations.

The bill establishes that certain moneys received by the Attorney General shall be deposited in the Legal Affairs Revolving Trust Fund.

The bill grants the Department of Legal Affairs (Department) rulemaking authority to implement the provisions of this act.

The bill provides for an effective date of October 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill should deter identity theft in Florida, protecting Florida citizens.

Promote personal responsibility: The bill increases personal accountability for unlawful actions and injurious behavior.

Limited Government: The bill creates a new civil cause of action designed to deter and punish identity theft.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Identity theft is a substantial problem in the United States and “phishing” represents the cutting edge of this devious practice.

“Phishing” refers to obtaining personal identifying information from individuals via the Internet with the intent to possess or use such information fraudulently. Typically, a person attempting to obtain information sends an e-mail that appears to come from a bank or other trusted business requesting an individual to verify their account by typing personal identifying information, such as credit card information, social security numbers, account usernames, passwords, etc. A person may also use a phony web site to trick citizens into forfeiting sensitive personal information.

The Federal Trade Commission (FTC) reported that 27.3 million Americans have been victims of identity theft in the last five years, including 9.9 million people in 2003 alone.¹ According to the FTC, last year’s identity theft losses to businesses and financial institutions totaled nearly \$48 billion and consumer victims reported \$5 billion in out-of-pocket expenses.²

Moreover, according to the Anti-Phishing Working Group, the volume of fraudulent phishing e-mail is growing at a rate in excess of 30 percent each month.³

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA), Chapter 501 part II, F.S., makes unlawful unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. “Trade or commerce,” which includes the conduct of any trade or commerce, however denominated, including any nonprofit or not-for-profit person or activity, is defined as the advertising, soliciting, providing, offering or distributing, whether by sale, rental, or rental, or otherwise of any good or service or any property, whether tangible or intangible, or any other article, commodity, or thing of value, wherever situated.⁴

¹ See article issued by Federal Trade Commission, dated September 3, 2003 “FTC Releases Survey of Identity Theft in U.S. 27.3 Million Victims in Past 5 Years, Billions in Losses for Businesses and Consumers”. See also <http://www.ftc.gov/opa/2003/idtheft.htm>.

² Id.

³ The Anti-Phishing Working Group (APWG) is a global pan-industrial and law enforcement association that focuses on eliminating fraud and identity theft that results from phishing and e-mail spoofing of all types.

⁴ Section 501.203(8), F.S.

The enforcing authority of FDUTPA is the local state attorney for violations within a single judicial circuit or the Department of Legal Affairs if the violation occurs in or affects more than one judicial circuit or, in cases affecting a single judicial circuit, when the office of the state attorney defers to the department in writing, or fails to act upon a violation within 90 days after a written complaint has been filed with the state attorney.⁵ The act provides for cease and desist orders, remedies by the enforcing authority, civil penalties, and receipt by the prevailing party of attorney's fees and costs in civil litigation.⁶

A willful violation of FUDTPA subjects the violator to a civil penalty of not more than \$10,000 for each violation.⁷ In any civil litigation initiated by the enforcing authority, the court may award to the prevailing party reasonable attorney's fees and costs if the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party or if the court finds bad faith on the part of the losing party.⁸

An individual harmed by a violation of FUDTPA may, without regard to any other remedy or relief to which the person is entitled, bring an action to obtain a declaratory judgment that an act or practice violates FUDTPA and to enjoin a person who has violated, is violating, or is otherwise likely to violate the act.⁹ In such an action, the person may recover actual damages, plus attorney's fees and court costs.¹⁰

Anti-Phishing Bills in Congress

The Subcommittee on Crime, Terrorism, and Homeland Security of the U.S. House of Representatives is currently reviewing H.R. 1099, which criminalizes internet scams involving the fraudulent obtaining of information, commonly known as "phishing".¹¹

H.R. 1099 bill imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in an activity constituting fraud or identity theft under Federal or State law: (1) creates or procures the creation of a website or domain name that represents itself as a legitimate online business without the authority or approval of the registered owner of such business; and (2) uses that website or domain name to solicit means of identification from any person.

In addition, H.R. 1099 imposes a fine or imprisonment for up to five years, or both, for a person who knowingly and with the intent to engage in activity constituting fraud or identity theft under Federal or State law sends an electronic mail message that: (1) falsely represents itself as being sent by a legitimate online business; (2) includes an Internet location tool referring or linking users to an online location on the World Wide Web that falsely purports to belong to or be associated with a legitimate online business; and (3) solicits means of identification from the recipient.

Effect of Proposed Changes

Name

Creates the "Anti-Phishing Act of 2006".

⁵ Section 501.203(2), F.S.

⁶ Section 501.208(1), F.S.

⁷ Section 501.619, F.S.

⁸ Section 501.621, F.S.

⁹ Section 501.211(1), F.S.

¹⁰ Section 501.211(2), F.S.

¹¹ The Senate companion, S.472 is before the Judiciary Committee.

Prohibited Acts

This bill prohibits obtaining identifying information from individuals through certain means via the Internet with the intent to possess or use such information fraudulently. The bill prohibits:

- Representing oneself, either directly or by implication to be another person, without the authority or approval of such other person, through the use of a web page or Internet domain name; and
- Using that web page, a link to the web page, or another site on the Internet to induce, request, or solicit another person to provide identifying information.

The bill also prohibits sending or causing to be sent an e-mail to a resident of this state that:

- Is falsely represented as being sent by another person, without the authority or approval of such other person;
- Refers or links the recipient to a falsely represented web site; and
- Directly or indirectly solicits from the recipient identifying information for a purpose that the recipient believed to be legitimate.

The bill defines or incorporates by reference definitions of terms as follows:

- **"Department"** means the Department of Legal Affairs.
- **"Electronic mail message"** means an electronic message or computer file that is transmitted between two or more telecommunications devices; computers; computer networks, regardless of whether the network is a local, regional, or global network; or electronic devices capable of receiving electronic messages, regardless of whether the message is converted to hard copy format after receipt, viewed upon transmission, or stored for later retrieval.¹²
- **"Electronic mail address"** means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.¹³
- **"Identifying information"** means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including any:
 1. Name, postal or electronic mail address, telephone number, social security number, date of birth, mother's maiden name, official state-issued or United States-issued driver's license or identification number, alien registration number, government passport number, employer or taxpayer identification number, Medicaid or food stamp account number, bank account number, credit or debit card number, or personal identification number or code assigned to the holder of a debit card by the issuer to permit authorized electronic use of such card;
 2. Unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation;
 3. Unique electronic identification number, address, or routing code;
 4. Medical records;
 5. Telecommunication identifying information or access device; or
 6. Other number or information that can be used to access a person's financial resources.¹⁴

¹² s. 668.602(7), F.S.

¹³ s. 668.602(6), F.S.

¹⁴ s. 817.568(1)(f), F.S.

- **"Internet domain name"** means a globally unique, hierarchical reference to an Internet host or service, which is assigned through centralized Internet naming authorities and which is comprised of a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.¹⁵
- **"Web page"** means a location that has a single uniform resource locator (URL) with respect to the world wide web or another location that can be accessed on the Internet.

Remedies

The bill gives standing to bring a civil action under this part to:

- A person engaged in the business of providing Internet access to the public who was adversely affected by the violation;
- A financial institution as defined by s. 655.005(1)(h), F.S., adversely affected by the violation.
- An owner of a web page or trademark who was harmed by a violation under this bill; and
- The Attorney General.

A person bringing an action may seek injunctive relief to halt a violation under this bill, recover damages in the greater amount of the actual damages arising from the violation, or \$5,000 for each violation of the same nature, or seek both injunctive relief and damages. Violations are considered of the same nature if they consisted of the same action or course of conduct regardless of how many times the act occurred. A court may increase damages to three times the actual damages sustained if violations constitute a pattern or practice.

The bill also provides for an award of attorney's fees and costs to a prevailing plaintiff.

The bill provides that the violator submits personally to the jurisdiction of the courts of the State of Florida by committing a violation of this Act. In addition, the bill establishes a 3 year statute of limitations to bring a suit under the Act.

The bill also provides that venue lies in any county in which the plaintiff resides or in which any part of the violation occurred.

The bill requires that any moneys received by the Attorney General for attorney's fees and costs, or not utilized to reimburse persons harmed under this act, shall be deposited in the Legal Affairs Revolving Trust Fund.

The bill does not preclude the award of damages otherwise available for the same conduct pursuant to federal or state law.

The bill grants the Department rulemaking authority to implement the provisions of this act.

Exemption

The bill exempts from liability a telecommunication provider's or an Internet service provider's good faith transmission or intermediate temporary storing of identifying information.

C. SECTION DIRECTORY:

Section 1: Creates s.668.6076, F.S. to provide a title; s.668.6077, F.S., to provide definitions; s.668.6078, F.S. to provide prohibited acts; s.668.6079, F.S. to provide remedies and standing; and s.668.6080, F.S. to provide an exemption.

¹⁵ s. 668.602(10), F.S.

Section 2: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

See Fiscal Comments.

2. Expenditures:

See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

This bill may lessen the frequency of identify theft and the costs associated with such theft, to the benefit of Florida citizens and businesses.

D. FISCAL COMMENTS:

The bill grants the Attorney General authority to enforce violations under this bill. Therefore, the Attorney General will incur costs in order to prosecute persons that violate this bill. The costs, however, are indeterminate.

According to the Department of Legal Affairs, it prosecuted only two cases under the 2004 Electronic Mail Communications Act, which creates criminal penalties for sending unsolicited false or misleading commercial electronic mail messages to an electronic mail address that is held by a resident of Florida.¹⁶ A number of persons filed additional complaints; however the Department of Legal Affairs has not been able to determine who sent the messages, preventing further action under the statute.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require a municipality or county to expend funds or to take any action requiring the expenditure of funds. The bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate. The bill does not reduce the percentage of state tax shared with municipalities or counties.

2. Other:

¹⁶ See section 668.603, F.S.

This Act creates sections 668.6076 – 668.6080, F.S., to provide criminal penalties for the acquisition of personal identifying information from a resident of this State with the intent to possess or use such information fraudulently.

The bill will assert the police power of Florida over non-Florida persons or entities and could raise constitutional issues.

Dormant Commerce Clause

The Commerce Clause empowers Congress to regulate commerce among the several states.¹⁷ “This affirmative grant of authority to Congress also encompasses an implicit or dormant limitation on the authority of the States to enact legislation affecting interstate commerce.”¹⁸ The aspect of the Commerce Clause which operates as an implied limitation upon state and local government authority is often referred to as the dormant Commerce Clause.¹⁹

In Pike v. Bruce Church Inc.,²⁰ the court devised a two prong test to determine if a state statute violates the dormant Commerce Clause:

Where the statute regulates even-handedly to effectuate a legitimate local public interest, and its effects on interstate commerce are only incidental, it will be upheld unless the burden imposed on such commerce is clearly excessive in relation to the putative local benefits. If a legitimate local purpose is found, then the question becomes one of degree. And the extent of the burden that will be tolerated will of course depend on the nature of the local interest involved, and on whether it could be promoted as well with a lesser impact on interstate activities.

The Supreme Court explained that the critical consideration is the overall effect of the statute on both local and interstate activity with respect to both parts of the Pike test.²¹ The Supreme Court has invalidated statutes under the Pike test on the grounds that their extraterritorial effect renders them unconstitutional.

For instance, in Healy, the court held:

[T]he extraterritorial effects of state economic regulation stand at a minimum for the following proposition:

First, the “commerce clause . . . precludes the application of a state statute to commerce that takes place wholly outside of the State’s borders, whether or not the commerce has effects within the State” Second, a statute that directly controls commerce occurring wholly outside the boundaries of a State exceeds the inherent limits of the enacting State’s authority and is invalid regardless of whether the statute’s extraterritorial reach was intended by the legislature. The critical inquiry is whether the practical effect of the regulation is to control conduct beyond the boundaries of the State. Third, the practical effect of the statute must be evaluated not only by considering the consequences of the statute itself, but also by considering how the challenged statute may interact with the legitimate regulatory regimes of other States and what effect would arise if not one, but many or every, State adopted similar legislation. Generally speaking, the Commerce Clause protects against inconsistent legislation arising from the projection of one state regulatory regime into the jurisdiction of another state.²²

¹⁷ See U.S. Const., art. I, § 8, cl. 3.

¹⁸ Healy v. The Beer Institute, 491 U.S. 324 (1989).

¹⁹ MaryCle, LLC v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006); citing Bd. of Trs. of the Employees’ Ret. Sys. of Baltimore City v. Mayor and City Council of Baltimore, 317 Md. 72 at 131 (1989).

²⁰ 397 U.S. 137 (1970).

²¹ See Brown-Forman Distillers Corp. v. N.Y. State Liquor Authority, 476 U.S. 573 at 579 (1986).

²² Healy at 336-37; see also MaryCle, at 15.

In American Libraries Ass'n v. Pataki²³, the first case to apply the dormant Commerce Clause to a state law on Internet use²⁴, a federal trial court granted an injunction preventing the State of New York from enforcing a statute that criminalized intentional communications via the internet for the purpose of engaging in harmful sexual conduct with a minor. The court held that the New York Act is concerned with interstate commerce and contravenes the Commerce Clause for three reasons:

First, the Act represents an unconstitutional projection of New York law into conduct that occurs wholly outside New York. Second, the Act is invalid because although protecting children from indecent material is a legitimate and indisputably worthy subject of state legislation, the burdens on interstate commerce resulting from the Act clearly exceed any local benefit derived from it. Finally, the Internet is one of those areas of commerce that must be marked off as a national preserve to protect users from inconsistent legislation that, taken to its most extreme, could paralyze development of the Internet altogether. Thus, the Commerce Clause ordains that only Congress can legislate in this area, subject, of course, to whatever limitations other provisions of the Constitution (such as the First Amendment) may require.²⁵

"Many courts have followed the logic of American Libraries Ass'n."²⁶

Moreover, courts have examined "spam" statutes, which prohibit unsolicited false or misleading commercial electronic mail under the dormant Commerce Clause and found those statutes to be constitutional.²⁷

In Heckel, the court held that there was no sweeping extraterritorial effect that would outweigh the local benefits of the Act because the statute regulates only those emails directed to a Washington resident or sent from a computer located within Washington.²⁸ The Act specifically prohibited e-mail solicitors from using misleading information in the subject line or transmission path of any commercial e-mail message sent to Washington residents or from a computer located in Washington.²⁹ The court distinguished the case from American Libraries Ass'n stating that the Washington Act did not impose liability for messages that are merely routed through Washington or that are read by a Washington resident who was not the actual addressee.³⁰

In MaryCle, the court held that a Maryland statute was facially neutral because it applies to all email advertisers, regardless of their geographic location. It does not discriminate against out-of-state senders.³¹

In Ferguson, the court held that a California statute did not violate the commerce clause because the only burden on interstate commerce is that the email be truthful and non-deceptive email.³²

Similarly, in Cashatt, a Florida court, using the Pike test, upheld a statute that criminalized the use of a computer on-line service or Internet service to seduce, lure or entice, a child to commit any illegal act.³³

²³ Am. Libraries Ass'n, 969 F. Supp. 160 (S.D.N.Y. 1997).

²⁴ See State v. Heckel, 24 P.3d 404 (Wash 2001).

²⁵ Am. Libraries Ass'n, 969 F. Supp. at 169 (S.D.N.Y. 1997)

²⁶ See The Internet and the Dormant Commerce Clause, 110 The Yale Law Journal 787 (2001).

²⁷ See State v. Heckel, 24 P.3d 404 (Wash 2001); MaryCle, LLC. v. First Choice Internet, Inc., 2006 WL 173659 (Md. App. 2006);

Ferguson v. Friendfinders, Inc., 94 Cal.App.4th 1255 (1st Dist. 2002).

²⁸ Heckel, at 412-13.

²⁹ Id at 413.

³⁰ Id.

³¹ MaryCle, at 19.

³² Ferguson, at 1265.

³³ See Cashatt v. State, 873 So.2d 430 (1st DCA 2004).

The Anti-Phishing Act of 2006, appears to apply evenhandedly to in-state and out-of-state transmitters. The local benefit of this Act is to protect the public and businesses from misleading and deceptive practices involving fraudulent use of personal information, a legitimate local public interest, and the only burden imposed is not using the Internet for the purpose of obtaining another's personal information for a fraudulent purpose.

B. RULE-MAKING AUTHORITY:

The bill grants the Department of Legal Affairs rulemaking authority to implement the provisions of the Act.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

1 A bill to be entitled

2 An act relating to the Anti-Phishing Act of 2006; creating
3 pt. IV of ch. 668, F.S.; providing a title; providing
4 definitions; prohibiting the fraudulent use of a web page
5 or Internet domain name to obtain personal identifying
6 information from a resident of Florida; prohibiting the
7 fraudulent use of electronic mail to obtain personal
8 identifying information from a resident of Florida;
9 providing a civil action for injunction and damages;
10 authorizing an award of triple damages in certain cases;
11 providing for an award of attorneys' fees to a prevailing
12 plaintiff; providing for personal jurisdiction over a
13 violator; providing venue for a civil action; providing
14 for deposit of moneys received by the Attorney General in
15 an action under this act into the Legal Affairs Revolving
16 Trust Fund; providing rulemaking authority; providing an
17 exemption; providing an effective date.

18
19 Be It Enacted by the Legislature of the State of Florida:

20
21 Section 1. Part IV of chapter 668, Florida Statutes,
22 consisting of sections 668.6076, 668.6077, 668.6078, 668.6079
23 and 668.6080, is created to read:

24 668.6076 Short Title.--This part may be known by the
25 popular name of the "Anti-Phishing Act of 2006."

26 668.6077 Definitions.--As used in this part the term:

27 (1) "Department" means the Department of Legal Affairs.

28 (2) "Electronic mail address" shall have the definition
29 provided by s. 668.602(6).

30 (3) "Electronic mail message" shall have the definition
31 provided by s. 668.602(7).

32 (4) "Identifying information" shall have the definition
33 provided by s. 817.568(1)(f).

34 (5) "Internet domain name" shall have the definition
35 provided by s. 668.602(10).

36 (6) "Web page" means a location that has a single uniform
37 resource locator (URL) with respect to the world wide web or
38 another location that can be accessed on the Internet.

39 668.6078 Prohibited Acts.--

40 (1) No person may, with the intent to engage in conduct
41 involving the fraudulent use or possession of another person's
42 identifying information:

43 (a) Represent oneself, either directly or by implication
44 to be another person, without the authority or approval of such
45 other person, through the use of a web page or Internet domain
46 name; and

47 (b) Use that web page, Internet domain name, or a link to
48 the web page, that domain name, or another site on the Internet
49 to induce, request, or solicit a resident of this state to
50 provide identifying information.

51 (2) No person may, with the intent to engage in conduct
52 involving the fraudulent use or possession of identifying
53 information, send or cause to be sent to an electronic mail
54 address held by a resident of this state an electronic mail
55 message that:

56 (a) Is falsely represented as being sent by another
57 person, without the authority or approval of such other person;

58 (b) Refers or links the recipient of the message to a web

59 page; and

60 (c) Directly or indirectly induces, requests, or solicits
61 the recipient of the electronic mail message to provide
62 identifying information.

63 668.6079 Remedies.--

64 (1) The following persons may bring a civil action against
65 a person who violates this part:

66 (a) A person engaged in the business of providing Internet
67 access service to the public who is adversely affected by the
68 violation;

69 (b) A financial institution as defined by s. 655.005(1)(h)
70 that is adversely affected by the violation;

71 (c) An owner of a web page, trademark, or service mark who
72 is adversely affected by the violation; or

73 (d) The attorney general.

74 (2) A person bringing an action under this section may:

75 (a) Seek injunctive relief to restrain the violator
76 from continuing the violation.

77 (b) Recover damages in an amount equal to the greater of:

78 1. Actual damages arising from the violation; or

79 2. \$5,000 for each violation of the same nature.

80 (3) The court may increase an award of actual damages in
81 an action brought under this section to an amount not to exceed
82 three times the actual damages sustained if the court finds that
83 the violations have occurred with a frequency as to constitute a
84 pattern or practice.

85 (4) For purposes of this section, violations are of the
86 same nature if the violations consist of the same course of
87 conduct or action, regardless of the number of times the conduct

88 or act occurred.

89 (5) A plaintiff who prevails in an action filed under this
90 section is entitled to recover reasonable attorney's fees and
91 court costs.

92 (6) By committing a violation under this part, the
93 violation submits personally to the jurisdiction of the courts of
94 this state. This section does not preclude other methods of
95 obtaining jurisdiction over a violator of this part.

96 (7) An action under this part may be brought in any court
97 of competent jurisdiction to enforce such rights and to recover
98 damages as stated in this part.

99 (8) The venue for a civil action brought under this
100 subsection shall be the county in which the plaintiff resides or
101 in any county in which any part of the alleged violation of this
102 part took place, regardless of whether the defendant was ever
103 actually present in that county. A civil action filed under
104 this section must be brought within 3 years after the violation
105 occurred.

106 (9) The remedies available in this part are in addition to
107 remedies otherwise available for the same conduct under federal
108 or state law.

109 (10) Any moneys received by the attorney general for
110 attorney's fees and costs of investigation or litigation in
111 proceedings brought under this part shall be deposited as
112 received in the Legal Affairs Revolving Trust Fund.

113 (11) Any moneys received by the attorney general and
114 neither received for attorney's fees and costs of investigation
115 or litigation nor used to reimburse persons found under this law
116 to be damaged, shall accrue to the state and be deposited as

117 received in the Legal Affairs Revolving Trust Fund.

118 (12) The Department of Legal Affairs may adopt rules
119 pursuant to ss. 120.536(1) and 120.54 to implement the
120 provisions of this part.

121 668.6080 Exemption.--This part does not apply to a
122 telecommunications provider's or Internet service provider's
123 good faith transmission or routing of, or intermediate temporary
124 storing or caching of, identifying information.

125 Section 2. This act shall take effect on October 1, 2006.
126

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

Bill No. **PCB EDTB 06-03**

COUNCIL/COMMITTEE ACTION

ADOPTED _____ (Y/N)
ADOPTED AS AMENDED _____ (Y/N)
ADOPTED W/O OBJECTION _____ (Y/N)
FAILED TO ADOPT _____ (Y/N)
WITHDRAWN _____ (Y/N)
OTHER _____

Council/Committee hearing bill: Economic Development, Trade &
Banking Committee
Representative(s) Detert offered the following:

Amendment (with title amendment)

Remove line(s) 121-124 and insert:

668.6080 Exemption.--

(1) This part does not apply to a telecommunication
provider's or Internet service provider's good faith
transmission or routing of, or intermediate temporary storing or
caching of, identifying information.

(2) No provider of an interactive computer service shall be
liable under state law for removing or disabling access to
content that resides on an Internet website or other online
location controlled or operated by such provider if such
provider believes in good faith that the content is used to
engage in a violation of this part.

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HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. (1)

18
19 ===== T I T L E A M E N D M E N T =====
20 Remove line(s) 16-17 and insert:
21 Trust Fund; providing rulemaking authority; providing
22 exemptions; providing an effective date.

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